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The History and Methods of the Paris Bourse

BY

E. VIDAL



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THE HISTORY AND METHODS OF THE PARIS BOURSE.

By E. VIDAL.

BOOK I.—*Generalities.*

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(1) The author of the present work deems it necessary, first of all, to connect the study of a financial market with that of the totality of elements belonging to the field of political economy.

Are the emission of fiduciary values and the trading therein special phenomena? Or are they, on the contrary, subject to the general conditions of the production and exchange of wealth?

Beyond a doubt, fiduciary values, more generally known in France as *valeurs mobilières*, i. e., transferable secu-

ities,[a] are wealth created by man's industry, and circulating by virtue of the general causes which create and dominate commerce.

The producer extracts the raw material or transforms it, in order to render it suitable to the requirements of the consumers; the tradesman conveys the manufactured product, or, as merchant, as commission agent, as broker, or even as money lender, causes it to circulate. In the same way there are producers, traders, and consumers of transferable securities.

The *producers* of transferable securities are the financiers, who negotiate with borrowing governments or with representatives of provinces or cities desirous of borrowing. They decide upon the rates of interest, the conditions of sinking funds, and the maturity of the coupons. They prepare and arrange the emissions; they do the same for borrowing stock companies. Often, they even create these stock companies; they lay down their by-laws, and they secure for them the executive and professional staffs. They have as auxiliaries the guaranty syndicates and the bankers—genuine *dealers* in transferable securities, who buy and sell for their own account. *Dealers* are likewise those auxiliaries of commerce who are represented by the

[a] Article 516 of the *Code civil:* "All wealth (*biens*) is either transferable or intransferable."

ART. 529. Transferable are, by the determination of the law, bonds and shares which represent monetary claims or movable effects; the shares or interests in financial, commercial, or industrial companies, even when the real estate used in these undertakings belongs to the companies. These shares or interests are deemed transferable with regard only to each partner, as long as the company exists. Perpetual or life annuities paid by the state or by individuals are also deemed transferable wealth according to law.

brokers and commission merchants in securities, and who trade for account of third parties in the public marts.

The capitalists, and even the speculators, are the *consumers* of transferable securities. Thus we see *producers*, *dealers*, and *consumers* in the domain of transferable securities, just as may be seen producers, dealers, and consumers in any other field of commodities.

(2) By a financial market, in the widest sense of the word, is meant the totality of elements, either universal or regional, which coöperate in the issuing and circulating of transferable securities.

In a limited sense, we understand by a financial market the public place in a city where dealings in securities are carried on—the public place specially set apart for these dealings. That public place is the *Bourse*.

Thus, the Bourse is a public place. This fact should be constantly borne in mind. Only thus is it possible thoroughly to understand not only its history but also, in certain cases, aggregate of regulations and laws which control its workings.

(3) Bourses differ from fairs and markets in that, according to the accepted usage on the bourses, articles need not be exhibited to the buyer at the time the contract is made, whereas the customary procedure at fairs and markets is different.[a]

The bourses themselves are divided into commercial exchanges proper (*bourses de commerce*), where merchandise is dealt in—such as wheat, flour, spirits, sugar, etc.—

[a] Thaller, *Droit Commercial*, 2d ed. No. 824.—Lyon-Caen et Renault, *Traité de Droit Commercial*, *T* I, Nos. 20 and 328.

and stock exchanges (*bourses des valeurs*), where securities are dealt in.

On the commercial exchanges the brokers formerly traded in merchandise, coins, bills of exchange, and deeds, which are in some way the predecessors of modern securities. The commission agents operating on the bourses were called brokers in exchange, provisions, and merchandise (*les courretiers de change, denrées et marchandises*). Thus, a decree of Charles IX, of June, 1572, is called, "A decree concerning brokers in exchange and provisions, as well as cloths, silk, woolens, linens, leather, and other kinds of merchandise, wines, wheat and other grains, horses and all other kinds of cattle."[a] It is only since the year 1639 that the functions of stockbrokers and merchandise brokers seem to have been separated.[b] Indeed, a decree of the King's council of April 2, 1639, gives to the brokers in exchange the name of *agents de change* (stockbrokers).[c]

As we stated, it is the fact that the Bourse is a public place which has determined its regulation. It is now important to enlarge upon this statement.

(4) In France commerce is unfettered, and yet the administration of stock exchanges is so overridden with regulations as to constitute, in that regard, an exception, a considerable derogation from common law.

Article 7 of the law of March 17, 1791, says: "Every one shall be free to carry on such business, or to practise such profession, as he may see fit, subject, however, to such police regulations as have been or may be made."

[a] *Manuel des Agents de Change*, p. 7.
[b] Lyons-Caen & Renault, *Traité de Droit Commercial*, T. IV, No. 872.
[c] *Manuel des agents de change*, p. 15.

On September 17, 1807, Regnaud de St. Jean d'Angely, when he tendered the draft of commercial law establishing a Code, expressed himself as follows:

"At the beginning of Book I and under the title of 'General Provisions,' the drafters had laid down rules, some of which are purely theoretical and superfluous. Some others have been found more fit to belong elsewhere. *Thus, for instance, we have not thought it necessary to state that in France everyone had the right to trade* * * * ."[a]

Thus no one disputes that the principle of freedom of trade remains to-day *one of the rights of man* (except in the politico-economical school which causes personal rights to be swallowed up by common rights). The principle of freedom of trade is a positive right, and is, in some way, confirmed by our constitutional laws. Indeed, one may read in the preliminary draft of the constitutional laws of 1875 the following sentence, characteristic of M. Lepère's style: "*We have enacted a series of constitutional provisions, without endeavoring to promulgate principles any more than to formulate philosophical statements. Our principles are known. They are the principles of 1789, which all succeeding governments have recognized.*"[b]

However, notwithstanding the principle of freedom of trade, *the French financial market is not free.* The profession of stockbroker (*agent de change*) is, as will be seen, a monopoly. It is not a State monopoly, like that of the sale of tobacco, gunpowder, matches, or of carrying

[a] *Exposé des Motifs du Code de Commerce. Corps Législatif.* 1° *Septembre*, 1807, *Archives Parlementaires*, 1807.

[b] Session of February 17, 1875. *Annales de l'Assemblée Nationale*, T. XXXVI, p. 619. The principle of freedom of trade, started in 1791, belongs to the principle of freedom to work proclaimed in 1789. (Ducrocq) *Droit Administratif*, T. III, p. 574.

the mails; it is a monopoly held by certain persons for their own benefit. It is a question of a *private* monopoly intrusted to individuals.

What is the origin of this phenomenon? Why this exception? We have found this question quite brilliantly elucidated in the pleadings of an eminent barrister, Dean du Buit, during a famous financial lawsuit.[a]

"The Bourse," said he, "is a public mart where bills and securities are purchased, just as fairs are public marts where grain and cattle and all kinds of merchandise are purchased. These public marts, these bourses, are always spontaneously and gradually formed, by one and the same process—either in answer to requirements, or through habits, or by the coöperation of populations.

"There is, for instance, in a given place, a center for gatherings, and, by and by, as it becomes known that purchasers will be found there, everyone brings to this center what he has to sell. Customs and regulations are also spontaneously here established. The way to buy, or to sell, is learned; and thus is formed what commercial laws designate as *local usage* (*l'usage de la place*).

"Finally, the market is established; it develops, and, as is necessarily the case with all that is human, abuses gradually make their appearance. These abuses become glaring; stockjobbing sets in; quarrels, brawls, and disorders take place; and the central power investigates.

"The authorities interfere and take the market in hand. There are abuses, they say; we are going to correct them;

[a] In the matter of the People and the Association of Stockbrokers *v.* Messrs. de Buzelet & Perrière. *Tribunal de la Seine 22 Février 1907. Compte rendu de la Cote de la Bourse et de la Banque du 24 Février, 1907.*

there are fraudulent middlemen—we shall replace them by middlemen whom we ourselves shall appoint. We shall make regulations; they will be carried out in the market; and thus we shall fix as a regulation that when a party desires to enter the market to dispose of securities, instead of trusting himself to one of these intermeddlesome middlemen, who bring business into disrepute, he will address himself to the middlemen whom *we* shall appoint. Through them alone he will be bound to trade."

Thus spoke *Maître* du Buit; and it can not be denied that it is from the police authority that the power of regulating the Bourse as a *public place* originates. But the authorities have found some advantage in the exercise of that power of regulation. Under the old régime the Government considered itself as the master of persons, as the owner of their right to work. Accordingly, it sold it to them. It often occurred that it bestowed monopoly and privilege on certain people who bought their benefits. The traffic in charges, employments, offices, which was the plague of the old régime, was practised also on the professions of merchandise broker and of stockbroker.

The monopoly of *agents de change*, in reality, was purchased from the Government under the old régime.

(5) The revolution takes place.

The law of March 17, 1791, which suppressed offices, charters, and wardenships of trade companies, *also abolished the monopoly of the agents de change*, which had been established by a series of successive royal decrees from 1724 to 1788—decrees by which the privileges of monopoly had been by turns bestowed, modified, withdrawn, restored, or confirmed.

But the disturbances at home and abroad at the time of the French Revolution, and the financial policy which, in the domain of private property, manifested itself in the suppression of stock companies,[a] and, in the domain of public credit, assumed the form of the emission of assignats, forced loans, and bankruptcy—all this caused a terrible repercussion on the financial markets.

When the Bourse was closed for the first time (from June 27, 1793, to April 25, 1795) and stock companies were suppressed, rentes disappeared from the market.[b] It was not rentes and shares of stock companies that attracted speculation, and for very good reasons. Instead, people dabbled in metals and in bills of exchange, owing to two causes: The decline in the value of assignats, and the scarcity of metallic currency.

It could not be otherwise. The phenomenon was inevitable, and so it actually took place. Let us explain it.

If you place in a safe 1,000 francs in napoleons, and if you cause these 50 pieces of 20 francs each to be represented by 1,000 sheets of paper, these 1,000 sheets of paper will theoretically, and yet quite accurately, be worth 1 franc each. If, instead of 1,000 sheets, 2,000 sheets are issued, the value will normally have to fall to 50 centimes. If 4,000 are issued, the value will fall to 25 centimes, and so on. It may happen that the party who emits them (especially if it be the Government) should become indignant because of the decline, and, in its ignorance, assign the reasons for the decline to stockjobbing. But, whatever

[a] Decree of August 24, 1793.

[b] Because interest was paid in paper which was gradually shrinking in value.

it may do, the paper will always tend to be worth exactly that which it represents. If the Government threatens those it holds responsible for the decline with the worst punishments—the carcan, the pillory, death even—it will be all in vain; the paper money will tend to be worth only that which it represents. Perhaps the paper may fall even below its intrinsic value, owing to the endeavors of the issuing party to boost it; but it will not really be the merchants who have caused the paper to fall, nor even those in whose hands the paper is found. The author of the phenomenon is the very party issuing the paper.

The scarcity of metal currency is a corollary to the decline of the paper. When paper declines, those who have gold do not care to exchange it for paper steadily depreciating in their hands. In consequence, they demand for a little gold a great deal of paper. Paper declines, gold rises.

Finally, when a country is in the throes of a revolution, home production of produce and of the most ordinary objects of utility diminishes for the very reason of the existing troubles. What is wanting, must be drawn from abroad; but how should payment be made for it? In gold, in coin used abroad—that is to say, in foreign bills of exchange. This is a new reason for the rise in gold and for a rise in the rates of foreign exchange which represents gold. These grounds for a rise will be still greater when the country is at war with one or several foreign nations.

Such is, in some way, the physiology of the double economic movement—the decline of paper, and the rise of metal. The speculations of the revolutionary times did

not cause the decline of paper, nor the rise of metal; they merely gave expression to the double phenomenon.

On this occasion the complete history of the French Revolution can not be given; the domestic strife, the riots, the famines, the wars of the Republic at its birth, need not again be narrated. But what is very well known is that, after a first issue of assignats for 400,000,000 French livres, in pursuance of the decree of December 19, 1790, other issues followed and successively brought up to 45,000,000,000 livres the amount of assignats issued. And the first form of the double phenomenon made its appearance—*the decline of paper.*

The rise in metallic currency followed, aggravated by the state of war between France and nearly the whole of Europe combined. Famines occurred, and the Convention authorized the supreme executive councils in the Departments to fix the maximum prices. Thereupon the merchants ceased to sell, and the manufacturers to produce, as the maximum had taken no account of the cost price. Stockjobbing assumed fabulous proportions. In order to procure food, people disposed of their belongings. The possessor of gold and silver or of bills of exchange dictated the prices. [a]

The convention took alarm at the rise of the metallic currency that accompanied the decline of the assignats—a rise still more aggravating the situation at home and the

[a] Rambaud. *Histoire de la Civilisation Contemporaine en France*, p. 291. See also in the *Magistrat* of M. Émile Levasseur, *L'Histoire des classes ouvrières depuis 1789 à 1870* (*T. I, Ch. Les Assignats*), the verification of the repercussions caused by the decline of assignats. In 1795 a bushel of potatoes was worth 200 livres in assignats; 1 pound of butter, 560 livres; a new coat, 15,000 livres; and a "clean" hat, 500 livres (p. 224).

wars abroad. The convention attributed the rise of the metal to stockjobbing, which, it should be borne in mind, had thrown off all restraint. Thus, two laws were promulgated—the law of 18 Fructidor, year III (April 30, 1795), forbidding the selling of gold and silver anywhere save on the Bourse, and that of 28 Vendémiaire, year IV (October 20, 1795), on the regulations of the Bourse.

The law of 18 Fructidor, year III, provided the following in article 1:

"ARTICLE 1. It is forbidden to anyone in Paris or in all commercial cities where there is a bourse, to sell gold or silver, either coined, or in bars or ingots, or manufactured; or to make trades having these metals for basis, in public places or premises other than the Bourse. All offenders shall be sentenced to two years' imprisonment, to be exposed to public view, with a sign board on the chest bearing the word '*agioteur*' (stockjobber), and by the same process all his property shall be confiscated for the benefit of the Republic."

As to the law of 28 Vendémiaire, year IV, on bourse regulation, it contained the following provisions:

"ART. 6. The committees of public safety and of finance shall appoint, within twenty-four hours, 25 stockbrokers; 20 of them shall be assigned to banking operations and negotiations in foreign bills in Paris; the remaining 5 shall be assigned to the purchase and sale of coined metal, and gold and silver bullion; all of them shall be called '*agents de change*' (stockbrokers).

"ART. 7. They shall be invested with a commission, which shall be delivered to them at once by the committees

of public safety and of finance, for the exclusive exercise of the functions which are conferred upon them."

Thus the law of 28 Vendémiaire, year IV, reëstablished the stockbrokers, suppressed in 1791, as merchants vested with a monopoly. The law reëstablishes their power only with regard to dealing in bullion and foreign bills.

Concerning bullion, article 13 of Chapter I stated:

"No statement concerning the sale or purchase of bullion shall be admitted in court except when made by the 5 appointed stockbrokers (*Aucune déclaration . . . ne sera reçu en justice que celle des cinq agents choisis . . .*), and no bargain shall be considered valid unless transacted through their agency."

Concerning the negotiating of bills of exchange, article 8 of Chapter II stated:

"No statement concerning the negotiation of bills of exchange, notes, or other commercial instruments shall be admitted in court except when made by the 20 appointed brokers, and no bargain shall be considered valid, unless transacted through their agency."

It is, therefore, quite evident that the lawmaker of Vendémiaire, year IV, was not guided by any respect for the principle of freedom of trade; that there existed at that time no principle but that of public safety. The life, the liberty, and the property of citizens, were of little moment. When the law of 28 Vendémiaire, year IV, was promulgated, the amount of assignats outstanding was 17,879,337,898 French livres, and the total number issued during the last three months was for the amount of 5,541,194,037 livres.[a]

[a] J. M. Fachan, *Historique de la Rente Française et des valeurs du Trésor*, p. 107.

The assignat of 1 livre had declined during these three months from 0.304 to 0.136.[a] A forced loan without interest had been levied on "the rich, the selfish, and the indifferent."[b] Terrible famines had afflicted the country and provoked bloody insurrections (12 Germinal, year III, 1 Prairial, year III, 13 Vendémiaire, year IV). England had determined to fight France in every way; she did not limit herself to merely organizing the Quiberon expedition. The Marquis de Puysage had convinced Pitt of the advantages to be derived from flooding French territory with counterfeit assignats which the best engravers of Holland were to manufacture with such consummate skill that "Cambon himself would have accepted them."[c] A first issue of these counterfeit assignats had taken place, and from Berne 3,000,000,000 livres of these had been let loose.[c] Meanwhile, on the 13 Fructidor, year III, a law which we have already mentioned forbade the sale of gold and silver elsewhere than on the Bourse, and almost immediately after that, on the 28 Vendémiaire, year IV, another law on bourse regulation declared valid, as far as bullion and foreign bills of exchange were concerned, only such trades as were made through a stockbroker.[d]

Let us now resume our account:

It is a settled fact that in France commerce is free.

This, however, does not apply to matters of brokerage in securities, under the old law, the old monarchical régime, because the Government considers itself entitled

[a] Ibid, p. 108.

[b] Ibid, pp. 111 and 115.

[c] Michelet, *Histoire du XIX^e siècle. Directoire* in the chapter *Quiberon.*

[d] See further Ch. Gomel, *Histoire financière de la Législative et de la Convention*, Vol. II, Chap. II.

to dominate the public place where the Bourse is kept, and to sell the right to work. That state of things ceased with the revolution.

During the revolutionary period speculation was turned to bullion and bills of exchange.

The convention then reëstablished the monopoly of stockbrokers, which had not long ago been suppressed, because it ascribed the responsibility for the occurrences to speculation. The monopoly was applied to bullion and bills of exchange only.

(6) The laws which have in some way reconstituted the legal prerogatives of bourse operations are: The law of 28 Ventôse, year IX; the decree of 27 Prairial, year X, and the *Code de commerce*, in 1807; the first two provisions under the Consulate, the third under the Empire.

To-day they still govern the matters forming the subject of the present work.

The law of 28 Ventôse, year IX, and *the Code de commerce* of 1807 conferred on stockbrokers a monopoly of trade in government and other securities susceptible of being quoted.

By the law of April 28, 1816, stockbrokers, as well as notaries, barristers practising before the *Cour de cassation* (highest court of appeal in France), lawyers, court clerks, bailiffs (*huissiers*—officials who protest bills, notes, etc.), merchandise brokers, and appraisers, acquire the right to introduce their successors, in consideration of additional surety bonds aggregating about 40,000,000 francs for the totality of these ministerial offices. As to the stockbrokers, their bond, which had then been 100,000 francs, was increased to 125,000 francs. The

interest on all these bonds was reduced from 5 per cent to 4 per cent.

The stockbrokers become by that fact the owners of their offices. The right to introduce a successor to the Government is sold by the holder when he withdraws from business. It is only thus that a stockbroker may sell his office.

The law of 1816 has always been severely criticised. The State can give back freedom to the trade in securities only by purchasing the commissions or indemnifying the holders of these commissions. Well, as time goes on, securities become more and more numerous, and consequently the commissions of stockbrokers must become more and more valuable. Moreover, the more the State's budgets tend to become complicated and to increase, the less easy it becomes, in consequence, for the French Government to place the financial market on a footing consistent with the principle of freedom of trade.

Thus the Bourse in France rests legally on the basis of these old laws of the years IX and 1807.

(7) Several attempts have been made to modify the legal status of the Bourse, but they have failed for sundry reasons. The last attempt took place in 1897. Two Senators, MM. Trarieux and Boulanger, presented the draft of a law which caused a discussion of the finance law of 1898. During this discussion a question was raised relating to the mode of collecting the tax on bourse operations, in answer to which the Government declared, that, taking for a basis the laws then in force, it would modify the status of the financial market simply through decrees.

securities *par excellence*, it remains to be said that free trading in them is tolerated, although not legally recognized, as will be seen later. Finally, it should be noticed that a royal ordinance of November 23, 1823, abolished the interdiction to quote foreign securities.

The monopoly of stockbrokers has, therefore, lost all its grounds for subsisting.

Nevertheless, it still exists in law, and is, moreover, sustained by it more strongly than ever.

This is a consideration which will acquire its full value when the subject of the present work shall have been treated in full.

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FIRST DIVISION. *Bourses.—Brokers, stockbrokers (agents de change), curb brokers (coulissiers).—Kinds of securities dealt in.*

(1) The Bourse is a public market for merchandise and securities. It is the meeting place for those having to deal in merchandise or securities, either for their own account or for the account of their constituents. In the case of merchandise proper—wheat, flour, spirits, etc.—the bourse is usually called *Bourse de Commerce* (a commercial bourse). In the case of securities the bourse is called *Bourse des Valeurs* (a stock exchange).

The operators on the *Bourse de Commerce* are merchandise brokers (*courtiers en marchandises*). The profession of merchandise broker is free, but this has not always been the case. It was a monopoly under the old régime. It was made free in 1791, monopolized again in the year IX of the Republic—that is, at the time when the lawmakers established commercial exchanges (28 Ventôse), as well as the institution of stockbrokers—then freed again by the law of July 18, 1866.

(2) The operators on the *Bourse des Valeurs* are stockbrokers (*agents de change*), whose profession is monopolized. It was monopolized under the old régime, like the profession of merchandise broker, with which it was long confounded. It was made free by the law of March 17, 1791,

and monopolized again by the law of 28 Ventôse, year IX. But while, in 1866, the law again freed merchandise brokerage, the profession of stockbroker remained a monopoly. It is so still.

(3) The stockbrokers (*agents de change*) are not the only ones to operate on the Bourse as brokers, as will be seen later. The following, however, are the prerogatives of the stockbrokers:

1. As brokers they have the exclusive right to trade in government or other securities susceptible of being quoted. (Art. 76 of the *Code de commerce*).[a]

2. As brokers, they have also the exclusive right to negotiate bills of exchange, notes, and all commercial instruments. (Art. 76 of the *Code de commerce.*)

3. To verify the quotations of these securities. (Art. 76 of the *Code de commerce.*)

4. Before the law of July 18, 1866, they divided with the merchandise brokers (*courtiers*) the privilege of dealing in metals. Brokerage as regards mechandise having become free, the privilege of the stockbrokers disappeared on that account. But they alone have the right to verify the quotations of metals. (Art. 76 of the *Code de commerce.*)

5. The stockbrokers give the necessary certificates for transfers of rentes, on the terms provided for by the

[a] It should be borne in mind that stockbrokers are not permitted to reveal the names of their customers. (Art. 19, decree of 27 Prairial, year X.) Therefore, in contradistinction to the merchandise broker proper, who places the parties in personal contact and then withdraws, the stockbroker brings them into relation, but hides their identity. The stockbroker is, therefore, to be more accurate, a commission agent. According to article 94 of the *Code de commerce*, a commission agent is a party who binds himself in his own name between the parties.

decree of 27 Prairial, year X, royal ordinance of April 14, 1819, and the decrees of July 12, 1883, and June 10, 1884. (Decree of October 7, 1890, art. 76.)

6. They are intrusted with the publication of the Official Bulletin of Oppositions to the Negotiation of Securities "to Bearer." (Law of June, 1872, art. 11.)[a]

7. They may be commissioned by the courts to negotiate securities—especially, pledged securities. Art. 93 of the *Code de commerce;* art. 70 of the decree of October 7, 1890.)

8. They may be commissioned by the courts to dispose of the property of minors within the terms prescribed by the law of February 27, 1880.

The stockbrokers in Paris number 70. (Later we shall speak of stockbrokers in the provinces.)

They form an association, and a part of them, chosen by ballot, form the syndical chamber, composed of a syndic and eight members, and intrusted with the carrying out of disciplinary measures, along with all general matters concerning the collective welfare of the corporation. The stockbrokers are named by decree of the President of the Republic; they are placed under the disciplinary rule of the Minister of Finance. (The stockbrokers in the Departments (provinces) are in some cases under the Minister of Finance, and in others under the Minister of Commerce.)

(4) Stockbrokers alone have the right, according to

[a] By this law, the dispossessed owners of lost or stolen certificates are given the means of obtaining duplicates of the same after a certain delay. They must declare their protest against (*faire opposition*) the negotiation of their certificates, and publish a note to that effect in the "*Bulletin officiel des Oppositions.*" All negotiations made in disregard of this publication are rejected, without affecting the protesting party. (See note to No. 13.)—Translator.

law, to trade in government and other securities susceptible of being quoted. It is understood, however, that securities which have not been explicitly admitted on the official quotation list, either because the stockbrokers did not care to adopt them, or because the securities did not fulfill the required statutory conditions, may, nevertheless, be dealt in outside the Bourse.[a]

There exist for this purpose free intermediaries, called bankers (oftener "*coulissiers*"—curb brokers), who deal on the bankers' market (*marché en banque*), known as the "coulisse," in securities called bank securities, or curb securities (*valeurs en banque ou valeurs de coulisse*).

Frequently, one may hear on the Bourse these two words pronounced in opposition to one another: the Parquet (the floor), the Coulisse (the curb). By Parquet is meant the stockbrokers' market, on account of the parquet floor on which they stand. The Coulisse (equivalent to the New York curb) is thus called, owing to the fact that formerly the bankers congregated in a narrow passageway called *La Coulisse.*

The number of curb brokers (*coulissiers*) is not limited. Anyone can become a curb broker who wishes to establish himself as such, to employ sufficient capital for meeting the requirements of the business, to pay the license, and to style himself banker. But a certain number of the bankers club together, form a syndicate, agree upon common rules, and elect a syndical chamber authorized to see to it that the professional discipline is lived up to. Thus there are three categories outside of which, we must

[a] Decision of the *Cour de cassation* of July 1, 1885. Recueil de Sirey, 1885, 1. 257.

again repeat, the profession remains free. They are the syndicate of bankers dealing in securities for cash (*Syndicat des Banquiers en valeurs au comptant*), the syndicate of bankers dealing in securities for future delivery (*Syndicat des Banquiers en valeurs à terme*), and the curb for French rentes (*la Coulisse des rentes françaises*).

It should be noted that, although, according to law, dealings in French rentes are the prerogative of the monopoly of stockbrokers, and any intrusion into the business reserved for them is an offense punishable by fine,[a] nevertheless curb brokers are tolerated as dealers in French rentes, alongside of the stockbrokers—thus becoming their powerful competitors. No suit is brought against them for interfering with the business of the stockbrokers, but their operations are not valid in court. For that reason the curb for rentes does not take the name of

[a]Article 8 of the law of 28 Ventose, year IX. The penalty is very severe. It is a fine which amounts to not less than one-twelfth of the amount of the surety bond, and not more than one-sixth. Which is the bond that shall be taken as a basis? Shall it be the one of the year IX (60,000 francs)? Is it the present bond (250,000 francs)? The *Cour de cassation* took as a basis the bond at the time the offense was committed. (Aug. 28, 1857, S 1857–1879; Jan. 14, 1860, S 1860, 1, 481, *Trib. correctionnel de Lyon;* Mar. 12, 1906, *Journal l'Information* of May 9, 1906.) That decision is sustained by M. Boistel (*Droit Commercial*, p. 431) and by M. Ruben de Couder. (*Dictionnaire de Droit Commercial*, V. *Agent de Change*, 112.) But it is sharply criticized by most authors (Buchère *Traité des Opérations de Bourse* No. 114, Lyon, Caen & Renault, *Traité de Droit Commercial*, vol. IV, No. 904; Mollot, *Bourses de Commerce*, No. 15, Dalloz, Rep. V, Bourse 164; Rolland de Villargues, Rep. du Notariat, *v. Bourses de Commerce;* Albert Broussois, *Du Monopole des Agents de Change et de sa Suppression*, p. 88). No extenuating circumstances are allowed when there is interference with the functions of a stockbroker. (*Tribunal correctionnel Seine*, June 24, 1859; and on appeal, Paris, August 2, 1859, S 1860, 1, 481); Mollot, *Bourses de Commerce*, No. 16.—Ruben de Couder, *Dictionnaire de Droit Commercial*, No. 115.—Buchère, *Traité des Opérations de Bourse*, No. 119.

Syndicate. Indeed, professional syndicates are recognized by law, and may bring actions and sue in court. It is not possible, therefore, to recognize under the name of syndicates associations of persons carrying on an unlawful business. The toleration enjoyed by the curb market in rentes originates from the consideration that the credit of the State is benefited if dealings in rentes are as free and extended as possible, in spite of the fact that the law intrusts the stockbrokers alone with the transactions in government securities.

(5) Finally, another category of bankers busies itself with dealings in bills of exchange and treasury bonds. The law likewise reserves for the stockbrokers the negotiation of these instruments, but, owing to the expansion of securities, and owing to the fact that the negotiation of commercial bills of exchange is little remunerative, the stockbrokers relinquish that part of their prerogatives to free commerce. They never negotiate a bill of exchange; they merely receive the list of quotations prepared by the bankers and insert it in their official list. The free dealers of this last category are called bankers and exchange brokers (*courtiers de change*). The word "*coulissier*" is never used to designate them.

Let us mention that these bankers—traders in bills of exchange—sometimes indorse the bill of exchange which is the object of the operation; they then negotiate the bill of exchange through themselves and for themselves, becoming parties to the contract. When they only transfer it to the buyer without indorsing it, they positively act as brokers, dealing for account of others.

(6) We shall now briefly review the nature of the securities negotiated by stockbrokers and curb brokers.

We shall look into the mechanism of operations for cash, and the mechanism of operations for future delivery. Comparing the two, we shall see the differences in the manner they are traded in, either on the Parquet (stockbrokers' market) or on the Coulisse (bankers' market), in the manner of quoting, and in the modes of settlement; and, finally, we shall look into the dealings in bills of exchange.

The operations on the Bourse are purchases and sales. They bear upon:—1, the certificates of loans of states, cities, counties (*départements*), and territories of foreign countries having an organization distinct from the state, such as provinces and states united by federal bonds; 2, the certificates of private or public enterprises constituted as stock companies—that is, the shares of companies called shares of common stock, shares of preferred stock, dividend shares, profit shares, or founders' shares (*parts de fondateur*), and the certificates of indebtedness—bonds, debentures, etc. The rules for operations are, some of them general ones, referring to the ordinary commercial conditions; the others are of a special character, relating to the traffic in securities on the Bourse. We shall take as a guide the rules of the Paris financial market.

Certificates are either fully paid in or partially paid in. They are fully paid in when the owner, whether he be the original subscriber or the assignee, has no further assessment to make on the certificate. For instance, one share of 100 francs of a company is said to be fully paid in, when the 100 francs of money it represents in the stated capital

have been paid in full. The certificates are partially paid in, when there remain one or more assessments to be made, before the certificate is fully paid in. For instance, one share of 100 francs is "25 francs paid in." That means that there remains a sum of 75 francs due on that certificate, to be effected in one or more payments.

(7) Securities are issued registered, mixed (registered as to principal only), or "to bearer."

The registered certificate (*titre nominatif*) bears the name of its owner, and the interest or dividends are payable on presentation of the certificate itself. The mixed certificate (*titre mixte*) is different from the preceding one in that the coupons for interest and dividends may be cut off from the certificate, and are payable to bearer. The certificate "to bearer" (*au porteur*) does not bear the name of the owner; the holder is supposed to be the owner, and the coupons are, as in the preceding case, payable to the party presenting them.

The delivery to the purchaser of registered or mixed certificates can be considered *good delivery* only when the latter has been entered as titulary on the registers of the debtor concern, and when a new certificate has been issued in pursuance of that operation. That operation is called transfer.

There are three kinds of transfers—the transfer "*réel*," the transfer "*d'ordre*," and the transfer "*de garantie*."

The actual (*réel*) transfer is effected by means of a request of the titulary of the registered certificate, addressed to the debtor concern, aiming at the cancellation of the existing certificate and at the creation of a new one in the name of a third party. The transfer is a deed in itself; it may be

the consequence either of a gift or of a sale. It is subject to a tax of 0.75 per cent.

The transfer "*d'ordre*" or "*de forme*" has for its object any alteration in the wording of the registration of a certificate, resulting from a deed different from the transfer declaration—whether the title remains vested in the name of the same titulary, with a modification of his social state, or it is transferred to a new titulary (deed of gift, income granted by deed before a notary).

These transfers are free of tax, because they are made in pursuance of deeds, which are themselves free of tax, or of deeds for which the tax has been paid.

Transfer "*d'ordre*" also applies to an operation now obsolete, the object of which was to safeguard professional secrecy by the stockbrokers (*agents de change*); the stockbroker signed a first transfer in the name of his fellow-broker, the buyer, who effected the transfer in the name of his customer; the intermediate transfer is called transfer "*d'ordre*" and is free of tax.

This latter transfer, like the transfer "*réel*," has become very rare, stockbrokers making a practice of delivering to one another only certificates "to bearer." (*Droit* de 1890, art. 47.)

The purpose of the transfer "*de garantie*" (provided for by art. 91 of the *Code de commerce*) is to establish the pledge of certificates the transmission of which is effected by a transfer on the books of the company; it is free of tax, because it does not carry with it a change of ownership.

Conversion is the act of causing a registered or mixed certificate to be transformed into a certificate "to bearer,"

or a certificate "to bearer" into a registered or mixed certificate.

The transfer following a transaction is effected as follows: The seller signs a transfer blank, by which he requires the company whose certificate is being sold (be it a government or private corporation) to transfer his status of bondholder or shareholder to the purchaser. On the other hand, the purchaser signs another sheet, called *transfer acceptance blank*. The seller then hands in at the public or private counter (1) his transfer blank, (2) the certificate, and (3) the transfer acceptance blank. When the operation is closed by the entries made within the debtor establishment, the transfer has been executed. A new certificate, bearing the name and profession of the purchaser, is handed to him. Usually it is the intermediary of the seller (stockbroker or banker) who demands the transfer in the name of his customer. Many corporations will not effect transfers, unless a stockbroker (*agent de change*) guarantees the signatures, even when the sale has been effected without the help of a stockbroker. Especially, so far as transfers of registered certificates of French rentes are concerned, the signature of a stockbroker is always required.

A certificate "to bearer" is delivered to the purchaser by merely being handed over to him. Article 2279 of the *Code civil* says: "With regard to chattels, possession is as good as title." These words mean that the holding of a certificate of personal property leaves it for granted that the holder is the owner thereof. The simple handing over of a certificate "to bearer" transfers the ownership thereof.

SECOND DIVISION.—*Operations for cash (opérations au comptant).*

(8) Bourse operations are made for cash or for future delivery (*au comptant ou à terme*). The operation for cash is an operation to be settled immediately or after a very short delay—certificate against cash, cash against certificate. The operation for future delivery (*opération à terme*) is to be settled within a period fixed in advance. We shall first consider operations for cash.

It is very easy to understand the mechanism of operations, if we follow in their logical order the successive stages of execution. How is a bourse order given? Let us follow that order to the market and let us see how it will be executed. When executed, how will it be checked by the party who gave it; how will the operation be settled; what expenses are to be borne by the party who gave the order; the delays it shall be subjected to; what are the means of recourse in case of delay or default of the party who received the order; for what is the party who gives an order liable, when he infringes the essential conditions of the contract? To all these questions the following explanations will give an answer, showing at the same time the workings of the financial market.

(9) Orders are given to stockbrokers either at a fixed price (*à cours fixe*), or at best (*au mieux*), or at the average price (*au cours moyen*). Instance of *an order at fixed price:* "Please buy 1 bond of the *Crédit Foncier* 1895 at 465 francs;" or "Please sell 3 shares of the Edison Company at 1,100 francs;" or "Please buy 3 francs French Rente 3½% at 98 francs."

An order at best shall be worded in the same way; but no price shall be fixed, because the stockbroker will buy

or sell at the price at which he will be able to buy or to sell. For *an order at the average price*, the indication of price shall be replaced by the words "*cours moyen*" (average price), or simply by the letters "c. m."

"*Cours moyen*" (average price) is a price halfway between the highest and the lowest prices quoted. "*Avant bourse*" (before the opening), that is to say, before the opening of the session, the stockbrokers and their clerks meet in a special room. Some offer, and others ask for, securities at the average price. Neither know what the price will be; that will be decided during the session. When an offer and a demand coincide, the transaction is closed. Only the price is missing. A ring of the bell announces the opening of the bourse session; the stockbrokers and their clerks leave the special room and proceed to the public hall around the railed inclosures. The session begins. As the dealers execute orders, they give the prices to a marker, whose entries will serve to make up the quotation list. The quotation list having been made up, the parties who have traded on the basis of the average rate, will be able to ascertain that average, by merely taking the highest and the lowest rates.

If only one price is quoted, that single price shall take the place of the average price.

If there are no quotations, the operations are considered as "*non faites*" (not executed).

It may happen that an order given at the average rate is not executed. The stockbroker (*agent de change*) may have been unable to find a counterpart. The party giving the order can make no claim on that account.

(10) In the bankers' market, that is to say, "*en coulisse*" (on the curb), orders are received either *at fixed prices* or *at best.* The bankers do not trade on the basis of average price. The party giving an order and the banker may, however, contract that a certain operation shall be executed at the average rate; but in such cases the banker will have contracted a personal obligation, and the operation contracted with his client will be distinct from the one closed in the public market.[a]

(11) Later, when we turn to transactions for future delivery (*opérations à terme*), we shall see that such transactions can not be made for less than 25 shares or for less than a certain number of francs of government rentes. But it should be borne in mind that *for cash* the minimum to be traded in is *one unit;* that is to say, one share, one bond, one debenture, etc. Some bonds, especially the bonds of the city of Paris or of the *Crédit Foncier* (Mortgage-loan Society), are divided into quarters and into fifths. Then such portions bear the name "quarter of a bond," "fifth of a bond."

Orders remain in force according to agreement between the parties. An order may be given, good for the day's session, or until canceled—that is to say, up to the time when the party giving the order shall have expressed the

[a] The stockbroker (*agent de change*) can not personally make a contract with his customer. Article 85 of the *Code de commerce* forbids him dealing for his own account. The result is, with a bourse order in hand, he can not enter into a private agreement with the party giving the order concerning the execution of same. However, article 85 of the *Code de commerce* was especially intended for the stockbroker; the banker (curb broker) may enter into a personal agreement and act for himself. In practice, when he personally becomes a party to the contract, he must notify his client of the fact. In certain cases the personal intervention of the broker is the result of circumstances.

desire to withdraw it, if it has not been filled. However, to avoid errors, stockbrokers and bankers often stipulate that, unless notified to the contrary, every order is considered as remaining in force until canceled. But even orders, good until canceled, can not remain in force for an unlimited period. Therefore, it is often understood that if an order, good until canceled, has not been executed during the first week, it shall be considered as canceled, so that, within each banking house or each stockbroker's office, new orders are issued every Monday. This condition is often mentioned on the printed forms of stockbrokers and bankers, who thus protect themselves against any eventuality.

When, after the closing of the Bourse, the stockbrokers and bankers return to their respective offices, they start checking. They sort out the trades they have made with their colleagues, and send to one another confirmations of the closed transactions, in order to avoid all possible errors. It is very apparent that during the scramble and noise errors may occur. One has bought instead of selling, another has bought or sold too much. It happens, also, that a figure has not been correctly understood, or erroneously entered on the blotter. In short, operations having been verbally contracted on the Bourse, it is necessary that this fiduciary process be replaced by a safer one. The checking includes, also, the entering on the books, of the transactions effected, as well as of the names of the parties who had given the orders, and for whose account they were executed. Notice thereof is at once sent to them.

(12) The party who gave the order, can control the notice he receives by means of the quotation list. He must be advised of the execution of his orders at quotations within the limits of published prices. No doubt, in some cases he may rightfully claim more favorable prices than those reported to him, although the prices at which his orders were executed have actually prevailed. In such a case, his representative has been disloyal. It may be realized that in that line of reasoning it is impossible to foresee the nature of the discussions that may ensue. The party who gave the order, will then apply for redress to the Syndical Chambers of stockbrokers or bankers (*aux chambres syndicales des agents de change ou banquiers*), and, if need be, to the courts. The fact remains that in most cases the controlling means is furnished by the quotation list.

The prices of securities listed by the stockbrokers, (*agents de change*) are published on a sheet called "*Cote Officielle*" (official price list).

The prices of curb securities (*Les cours des valeurs de coulisse*), listed by the "*Syndicat des Banquiers au comptant*" (syndicate of bankers trading for cash), are published in a special list called "*Cote du Syndicat des Banquiers en valeurs au comptant*" (price list of the syndicate of bankers trading in securities for cash).

The prices of curb securities which are not listed by any syndicate, and which are traded in owing to the natural phenomenon of offers and bids for securities tending to concur to the same place, are recorded on free quotation lists. These last, besides, publish the quotations of all other securities; those of the official market,

and those of the curb syndicates. The best known are "*Le cours de la Banque et de la Bourse (cote Desfossés)*" and "*La cote de la Bourse et de la Banque (cote Vidal).*"

On the official list of the stockbrokers (*Cote Officielle des agents de change*) the prices are given in the order of transactions. The "*Cote du Syndicat des Banquiers en valeurs au comptant*" gives only the lowest and highest quotations. The free quotation lists, however, give also the closing prices of the curb securities.

(13) When a stockbroker or banker, buying for account of a party who gave an order, has received the securities, the settlement is effected when he has delivered them and received the cash. The same applies to the stockbroker or banker selling, in his intercourse with the party who gave the order.

The securities must be "good delivery," free of all opposition to their negotiation, and with the interest agreed upon.

The stockbroker or the banker who should happen to deliver counterfeit securities, or lost or stolen securities, with an opposition existing to their being negotiated, would find himself exposed to have his deliveries refused, or sentenced to deliver securities of good delivery and free from defects.[a] By application of the same principle, the

[a] The owner deprived of his securities "to bearer" has the right to make opposition to their being negotiated, and to the interest and dividends and principal demandable being paid, by means of a special process provided for by the laws of June 15, 1872, and February 8, 1902. He thus puts himself in a position to obtain duplicates of his securities after a certain time. Unfortunately, this sort of proceeding does not apply to securities dealt in abroad. It would be desirable that an International Congress should prepare a similar clearing in every country, and thus insure the safeguarding of owners against the loss and theft of securities "to bearer."

stockbroker or banker is not allowed to deliver bonds drawn for redemption or subject to certain conditions.[a]

(14) The "*jouissance*" (interest accrued) is the right to the interest or the dividends. It starts from the date of the last payment. Instance: On October 19, 1908, French rentes 3 per cent were quoted for cash 95.40 francs, *jouissance* October, 1908. These last words mean that the purchaser is entitled to the interest coupon following the one of October, 1908. This latter one has been cut by the owner, who had the benefit of his property.

For shares of corporations, the coupons are numbered. They are traded in, for instance, "ex-coupon" 6 or 7, which means that the purchaser shall only be entitled to the dividend coupons subsequent to coupon 6 or coupon 7.[b]

Securities which are irregular as to the interest accrued, may be rejected. However, within the month preceding maturity, if the owner has detached the coupon, he may sell and make a good delivery, but the purchaser will deduct the amount of the missing coupon when settling. This option applies only to French securities.

(15) Finally, securities dealt in are supposed to be in order with the internal revenue concerning the payment of stamp taxes to which securities are subjected.

[a] To avoid all trouble in this regard, the transactions in securities subject to drawings are made on the stock exchange "*ex droit*" (minus the right) to the advantage obtained by the drawing, a few days before it takes place (art. 45 of the regulations of stockbrokers of Jan. 30, 1899); five days before, for bonds "to bearer," and seven days before, for registered bonds.

[b] On the Paris Bourse the coupons of French rentes are considered as detached fifteen days before their maturity. French rentes 3 per cent certificates are provided with coupons maturing January 1, April 1, July 1, and October 1. They are dealt in "interest accrued from January, beginning from the preceding December 16; interest accrued from April, beginning from the preceding March 16; interest accrued from July, beginning from the preceding June 16, and interest accrued from October, beginning from the preceding September 16"

(19) The time for delivery differs in the cases of registered certificates or certificates "to bearer."

Registered certificates that have been purchased must be at the disposal of the party who gave the order, the very next day after they have been received at the office of the stockbroker. If, after the twentieth session following the one when the transaction was effected, the securities have not been handed to the party who gave the order, the latter may call upon the stockbroker to fulfill the contract, and give notice of said notification to the Syndical Chamber of Stockbrokers (*Chambre syndicale des agents de change*), which shall take the necessary measures to insure the carrying out of the contract, at the risk of the stockbroker. In Paris the Syndical Chamber can not decline to effect that execution (then it is said that the stockbroker is "executed") even if the syndical chamber has to bear the consequences.

(20) The stockbroker, buying, who has not received the securities from his fellow-member, selling, may, at the fifteenth session following the session at which the transaction took place, disclose said fellow-member, seller, and call upon the Syndical Chamber of Stockbrokers to purchase ("buy in") the securities for account of said seller, and at the risk of the latter.

The proceeds from sales of registered securities must be placed at the disposal of the party who gives the order, on the day following the completion of the transfer. Having waited until after the twentieth session following the transaction, the party who gives the order to sell, may have recourse to the same measures which, we saw, the purchaser may resort to—that is to say, cause the

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"execution" of the stockbroker. On his side, the stockbroker, selling, may, at the fifteenth session following the one of the transaction, demand the "execution" of his fellow-member through the Syndical Chamber.

The above-mentioned delays are increased by eight days for securities, the transfers of which are subject to the approval of the boards of directors.

(21) Securities "to bearer" must be placed at the disposal of the buyers, on the very day following the delivery effected by the sellers. In their intercourse between themselves, the stockbrokers must deliver securities before the tenth session following the transaction. After that time they must exact the "buying in" for account of the stockbroker, seller, through their Syndical Chamber. On his side, the party who gave the order, may, after the fifteenth session following the one of the transaction, and after having called upon the stockbroker to effect delivery, give notice of this call to the Syndical Chamber of Stockbrokers, within twenty-four hours of the same, but must not use legal formalities. The Syndical Chamber will take the necessary steps, and, if need be, it will itself insure the proper execution of the contract. (Art. 55 of decree of June 29, 1898.)

The proceeds from sales must be at the disposal of the party who gave the order, two days after the securities have been handed to the stockbroker. It should also be noted that the stockbroker, selling, when dealing with a fellow-member who does not accept delivery, may enforce purchase through the Syndical Chamber for account of his fellow-member, buying, after the tenth session following the transaction. The party giving an order of

sale, who has not received a settlement after the fifteenth session, may apply to the Syndical Chamber of Stockbrokers, as has been said concerning the party giving purchasing orders.

(22) Dealings on the curb are not subject to the same delay in respect to deliveries. In theory, we may conceive that a buyer or seller for cash may exact the delivery of his securities or payment immediately after the transaction, provided he can on the spot fulfill the obligations of the purchaser or seller, which consist in paying the purchase money or delivering the securities sold, as the case may be; however, a certain delay is unavoidable on account of the banker, who acts as an intermediary, and who is, in fact, himself subjected to delays. The Associated Bankers of the City of Paris (*Les Banquiers Syndiqués du marché de Paris*), united in a professional syndicate within the provisions of the law of May 21, 1884, established the rule that securities "to bearer" must be delivered by the seller before the seventh session following the transaction. After that delay the buyer may make a demand on the seller by registered letter, at the same time notifying the Syndical Chamber of that syndicate. The latter effects the "buying in" for account of the defaulter at the tenth session following the day when it will have received the advice.

The party giving an order may also be "executed." A stockbroker is not bound to accept an order if, previous to all trading, he has not received the securities to be disposed of, or the funds intended to settle for the amount. But he may have been led to grant credit to the party giving the order. In such a case, if, after

notice by registered mail, the party who gave the order; has not, within three days from the time the letter was sent, come up with the securities or the cash, the "buying in" of the securities sold, or the "selling out" of the securities purchased, may be proceeded with immediately.

THIRD DIVISION.—*Operations for future delivery (à terme).*

(23) An operation for future delivery is one engaging the parties from the day of the contract, but the execution of which is put off to a maturity fixed in advance.[a] For instance: Peter buys on the 1st of the month 100 shares for the 15th of the current month at 100 francs.[b] On the 15th of the month, date of maturity—that is, the day of settlement—the winding up of the operation will take place. Peter must accept delivery of the stock and pay the price—10,000 francs.[c]

On the other hand, if he has sold 100 shares at 100 francs, he will have to deliver on settling day—that is, on the 15th of the month—100 shares, and receive 10,000 francs.[d]

Hence, the first settlement following operations for future delivery is the taking up of securities bought by the purchaser, and the delivery of securities sold by the seller.

It may happen that the purchaser for future delivery does not wish to take up the securities purchased. In such a case, he will resell them for the same maturity, and these two operations will show a difference, which,

[a] Art. 1185 of the *Code civil.*

[b] In the instances mentioned no account is taken of taxes or brokerages; this is done for the sake of simplicity.

[c] Art. 1650 of the *Code civil.*

[d] Article 1603 of the *Code civil.*

according to circumstances, will cause him to be debtor or creditor.

Instance: Peter, buyer of 100 shares at 100 francs, resells them at 110: Debtor of 10,000 francs, creditor of 11,000, he retires with a balance in his favor of 1,000 francs.

On the other hand, if he has resold with a loss, for instance at 90 francs, then, being a debtor of 10,000 francs and a creditor of 9,000 francs, he retires with a balance against him of 1,000 francs.

To purchase with a view of reselling at a higher price, is called to speculate for a rise (*être à la hausse*).

To speculate for a fall (*être à la baisse*) is to make the reverse operation, that is, to sell first with the hope of buying in later at a lower price.[a] Let us take up the various instances, by illustrating them with the accounting which results from these transactions, in order to comprehend better their working.

When Peter has bought with the intention to resell, and then has resold, or when he has sold with the intention to repurchase, and then has repurchased, the result on

[a] Some people experience difficulty in understanding the "short" sale (*vente à découvert*) which is the original transaction of speculation for a fall. It is often considered as illegitimate. The following anecdote will explain and justify it.

"M Boscary de Villeplaine, deputy syndic of the association of stockbrokers, was conversing with Napoleon regarding the discussion in the council of state of article 422 of the Penal Code (now repealed). 'Your Majesty,' said M. Boscary de Villeplaine, 'when my water carrier is at the door, would he be guilty of stellionate (selling property one does not own or selling the same property to two different parties) if he sold me two casks of water instead of only one, which he has?' 'Certainly not, because he is always sure of finding in the river what he lacks.' 'Well, Your Majesty, there is on the Bourse a river of rentes.'" (Memorial of the stockbrokers addressed to the Minister of Finance, 1843, p. 44, footnote.)

striking a balance will show him creditor or debtor, owing to the balancing of his debit with his credit.[a]

Instance: Settling account of Peter, who had purchased 100 shares at 100 francs, which he resold at 110 francs:

Dr.	Francs.	Cr.	Francs.
100 shares at 100 francs	10,000	100 shares at 110 francs	11,000
Credit balance	1,000		
	11,000		11,000

Profit, 1,000 francs.

(24) Operations for future delivery give rise to "*reports*" ("carrying-over" operations, "continuations"). It is in place here succinctly to explain their object and mechanism.

Object.—Let us suppose, in the instance above mentioned, that Peter, buyer for the 15th instant of 100 shares at 100 francs, wishes, when the 15th arrives, to extend his maturity until the 30th of the month.

Mechanism.—On that same day, the 15th instant, he will resell the securities at a special price, called "*cours de compensation*" (making-up price or clearing price [b]), and will rebuy, at the same time, for the end-of-the-month maturity at the same making-up price, increased by an amount called "*prix du report*" (cost of carrying over, "contango"). Let us suppose that 110 francs is the making-up price, and that the cost of carrying over is 1 franc. You find below the transaction on two accounts.

Let us first give the first account.

[a] Articles 1289 and 1290 of the *Code civil.*

[b] The clearing price is an accounting process with a view to unifying "carrying-over" operations. It is fixed by an agreement in the public market. The syndical chambers fixes that rate.

Peter, his settlement account for the 15th instant:

Dr.	Francs.	Cr.	Francs.
100 shares at 100 francs	10,000	100 shares at 110 francs (clearing price)	11,000
Credit balance	1,000		
	11,000		11,000

Profit, 1,000 francs.

Now, this is the second account for the end of the month.

Peter, his settlement account for the end of the month:

Dr.	Francs.	Cr.	Francs.
100 shares at 111 francs (110 francs plus 1)	11,100	Sales	None.

The two accounts are thus established: One, which includes a settled transaction, showing the operator as creditor or debtor, as the case may be, for an amount to collect or to pay; the other, showing a new operation, which, at the following settlement, will be the object of a liquidation—that is to say, another winding up, either by taking up or reselling the securities, or by a new "*report*" (continuation). The continuation has, therefore, the same result as a renewal of maturity.

Capitalists wishing to make temporary investments put their money out in "*reports*" (loans for carrying over, investments in continuations). On settling day they purchase, on the stock exchange, securities from buyers who desire to prolong their operations; they resell them to the same parties for the next maturity at the clearing price increased by the price of carrying over (contango).

On settling day these operations are easy, owing to the abundance of funds available for continuations (*capitaux reporteurs*). If there is no superabundance of funds, and if the engagements for a rise (*engagements à la hausse*) are not very numerous, continuations are cheap.

If money is plentiful and purchases are few, continuations are at par.

In case securities are wanting in comparison with the money available, the sellers will pay a premium in order not to make deliveries; this is called "*déport*" (backwardation).

For instance: Peter, seller of 100 shares at 100, finds himself unable to effect a delivery. He will pay, for instance, 1 franc per share for "*déport*" (backwardation), and his settling account will carry a repurchase at the clearing price (*cours de compensation*). His account at the following maturity will carry a sale at the clearing price, less 1 franc.

(25) Some operations for future delivery (*à terme*) are contracted for uncertain dates, though the maturity is foreseen. Such are transactions in securities "*à l'émission*" ("when issued"). Speculators undertake to deliver an issue of securities in perspective—when they are issued. Hence, operations "*à l'émission*" are transactions subject to settlement at a time when certain formalities will have been accomplished, and in a place where the delivery of the securities will be actually possible.

Some emissions of securities are subject to reductions in the allotments when the subscription lists are closed. That phenomenon gives rise to special operations called "*ventes de résultats*" (sales of percentage of securities obtained, or sale of allotments). One can sell, or purchase, the results of subscriptions for 3,000 francs rentes, for instance, or 100 shares, etc.

(26) Among operations for future delivery there are special ones called "*opérations à prime*" (options). These

are purchases concerning which the purchaser reserves for himself the right to abandon the trade, in consideration of a certain sum fixed in advance. For instance, Peter buys for the 15th instant 100 shares at 120 francs "*dont*" 5 francs.[a] The transaction is entered as 120/5. At a time fixed during the settling operations, called "*réponse des primes*" (option declaration)—this is the session preceding the day devoted to "contango" operations (*reports*)—Peter must announce whether he will take up the stock at 120, or whether he abandons the trade, by giving up 5 francs for each share to the seller.

As a rule, the prices for transactions in options are as much higher as the premium to be forfeited is smaller. Instance: A stock is worth 100 on the average. Let us suppose the rate is 120 francs "*dont*" 5; then we can take the rate as 125 francs "*dont*" 2.50; also we can take it as 127 francs "*dont*" 1.

There is no absolute rule for these differences, the same as there is no absolute rule for prices in a general way. Offers and bids cause the variations.

The maturity also plays a part in the option prices. Thus a transaction in options maturing in a month or six weeks or two months costs more than an option at a nearer date.

It is thought that transactions in options have been carried on in France from the time of a special operation made by George Law in 1718, in order to make an impression on people, and foster purchases of shares in his bank.

[a] The expression "*dont*" serves to indicate the sum to be forfeited. It implies the undertaking thus expressed. Peter buys securities at 120 francs, "*dont*" (of which) he shall forfeit 5 francs if he does not take up the securities.

He bought 200 shares deliverable in six months for an amount greater by 40,000 livres than the price they were worth then (300 livres)—it being understood that if, after six months, the shares were not worth 500 livres, he would forfeit the 40,000 livres to his seller. This was a real option transaction, and by entering upon such a contract, Law confirmed his faith in the rise of his shares. Numerous purchases by the public then took place. (See Edmond Guillard, *Opérations de Bourse*, p. 24.)

(27) Option transactions give rise to manifold combinations at the pleasure of the operator. We shall name the principal ones: [a] "*opérations à primes isolées*" (plain options); [b] "*opérations à prime contre ferme*" (operations of "option against non-option"); [c] "*opérations ferme contre prime*" ("non-option against option"); [d] *opérations à prime contre prime*" ("option against option").

[a] *Plain options.*—The plain option (*opération à prime isolée*) is the option transaction in its simplest form. Thus a capitalist or a speculator wants to buy stocks, but fears a decline, and prefers, in case the fall should be too severe, to reserve for himself the right to forego the trade, in return for a small sum. He will purchase, as we saw in the above instance, by supposition, at 120/5.

By keeping to that supposition, the following will happen: Just as it may be to the advantage of that purchaser to forego his trade at the cost of 5 francs for each share, so, on the other hand, his advantage may demand that he carry out his contract. In the latter case, as already stated, his transaction will be a fixed transaction (*opération ferme*).

Below you will find two instances illustrated by an account.

Instance of a transaction when the option is abandoned. The rate at the option declaration having been, let us suppose, 114 francs:

Peter, his settling account on the 15th instant.

Dr.	Francs.	Cr.	Francs.
100 shares at 120/5	Nil.	Sales	Nil.
Option abandoned	500	Balance due	500

Loss, 500 francs.

On the other hand, if we take for granted that the quotation at the option declaration was such that Peter found it advantageous to carry out the transaction, he becomes a non-optional buyer. Naturally, he may take up his securities, resell them, or have them carried over—this goes without saying. Having, indeed, become fixed, the transaction will be governed by the general principles enumerated above for fixed transactions. Such is the second case. Let us dwell upon it one moment more, in order to see the effect that a subsequent fixed sale will have on an account.

If we suppose the transaction on option carried out and wound up by a sale at a price which we will suppose to be 130 francs,[a] Peter's account will be made out as follows:

Peter, his settling account on the 15th instant.

Dr.	Francs.	Cr.	Francs.
100 shares at 120/5	12,000	100 shares at 130	13,000
Credit balance	1,000		
	13,000		13,000

Profit, 1,000 francs.

[a] The price of 130 is hypothetical. Let us remark that, provided the price is above 115, our option purchaser finds his advantage in selling, even if the price is below 120, and he, consequently, sells at a loss.

Thus, during the half month, the option operator has had the opportunity to sell non-optionally (*ferme*), if events led to an advantageous transaction.

The above transaction illustrates a fixed sale taking place after a purchase on option. But, instead of a fixed sale, a sale on option may be made. In that case, the transaction becomes a combination of option against option, which we shall investigate later in the combination [d].

We shall now proceed with the investigation of sale on simple option.

It has been said that "option" is a purchase which the purchaser could abandon. The case can not be reversed. The seller on option can not waive the contract; he is bound to the buyer.

The sale on "simple option" is suitable to the holder of securities who, in order to sell better, desires to take advantage of the difference existing between the rates of fixed transactions and the rates for options. For instance: A security is quoted "*ferme*" (without option) 100, the price of options is 120/5. Peter sells 100 shares at 120/5. If the purchase is taken up by the buyer, Peter has indeed sold profitably, since he sold his securities at 120, while they were worth 100 "*ferme*." If the purchase is abandoned, Peter keeps his securities, but the 500 francs premium which he collects, reduce, relieve, allay the loss which he experiences on the securities he owns.

Options therefore are not, as superficial minds formerly stated, a gambling operation.

The gambler is bold. On the other hand, the one who guards himself when he buys, the one who limits his loss

beforehand, like the one who, when selling, insures himself against danger, manages his property and acts cautiously.

(28) [b] *Transactions at "option against non-option" (prime contre ferme)*—We saw in the preceding instance a purchaser of options who made a fixed sale some time after his purchase. The combination, linked in some way, may be planned and carried out within a very short time, the same day, almost at the same moment. The operator devises the transactions simultaneously.

Let us imagine, therefore, that Peter buys 100 shares for the 15th instant at 120/5, and that simultaneously he makes a fixed sale at 100 francs.

Peter has at once registered a paper loss—the difference between 120 and 100, that is to say, 20 francs per share. But if a heavy decline occurs, and if the purchase on option is abandoned on the day of option declarations, Peter will find himself in the position of a speculator for a fall (bear), who sees the expected phenomenon happening, and who has limited his possible loss in case of a rise.

Below you will find the supposed outcome of the exercising and of the abandoning of the purchased option.

Let us take for granted that, on the day of option declaration, the option is exercised. The statement appears as follows:

Peter, his settling account on the 15th instant.

Dr.		Cr.	
Purchases.	Francs.	Sales.	Francs.
100 shares at 120/5	12,000	100 shares at 100	10,000
		Debit balance	2,000
	12,000		12,000

Loss, 2,000 francs.

On the other hand, the decline may have occurred to such an extent that Peter found it advantageous to abandon his trade at 120/5, and to repurchase "*ferme*" (non-optionally); let us then imagine a rate of repurchase of 80 francs, for instance. The account of Peter will be as follows:

Peter, his settling account on the 15th instant.

Dr.		Cr.	
Purchases.	Francs.	Sales.	Francs.
100 shares at 120/5	Nil.	100 shares at 100	10,000
Option abandoned	500		
100 shares at 80	8,000		
Credit balance	1,500		
	10,000		10,000

Profit, 1,500 francs.

The combination of "option against non-option" with regard to the speculator for a fall (bear) is based on a desire to limit his loss by insuring him against a rise, without limiting his profit. For the holder of securities, the combination permits the party who sold, and may be led to regret his sale on account of a very high ulterior rise, to accept a loss, but to keep his securities in order to sell them more advantageously, if the opportunity presents itself.

(29) [c] *The operation "non-option against option" (ferme contre prime)*—This operation tends to cover and to limit the risk of a fixed purchase.

A non-optional purchaser is indeed exposed to a decline without limit. Peter bought 100 shares at 100 francs for 10,000 francs. If his shares decline to 90, 80, 70, etc., he loses on them 1,000, 2,000, 3,000 francs.

In order to diminish his possible loss, or because he estimates that the rise, if it occurs, is not likely to amount

to much, our non-optional purchaser, who may have bought 100 shares at 100 francs, will, let us say, sell on option 100 shares at 120/5. His account, in case the option is exercised, will then be as follows:

Peter, his settling account for 15th instant:

Dr.		Cr.	
Purchases.	Francs.	Sales.	Francs.
100 shares at 100	10,000	100 shares at 120/5	12,000
Credit balance	2,000		
	12,000		12,000

Profit, 2,000 francs.

On the other hand, if the option were abandoned, Peter would face a fixed purchase; and if he should wind it up later by means of a sale at 90 francs, for instance, the account would appear as follows:

Peter, his settling account on the 15th instant:

Dr.		Cr.	
Purchases.	Francs.	Sales.	Francs.
100 shares at 100	10,000	100 shares at 120/5	Nil.
		Option abandoned	500
		100 shares at 90	9,000
		Debit balance	500
	10,000		10,000

Loss, 500 francs.

Peter has, therefore, diminished his loss by 500 francs. Indeed, if he had purchased non-optionally at 100 francs, without protecting himself by an option, he would have lost 1,000 francs when he resold at 90. On the contrary, having protected himself by the sale of a call, he saved 500 francs on the loss he experienced.

(30) [d] *Operations in "option against option" (prime contre prime)*—If the fact is borne in mind that quotations for transactions in options are as much higher as the costs of the options are smaller, that difference of prices may be utilized through a combination.

Let us, therefore, imagine that a purchaser of 100 shares at 120/5 for the 15th instant resells them at 125/2.50 for the same date, and let us see how the account will show, in case the options are exercised, and in case they are abandoned.

If the options are exercised, the account is as follows:

Peter, his settling account for the 15th instant:

Dr.		Cr.	
Purchases.	Francs.	Sales.	Francs.
100 shares at 120/5	12,000	100 shares at 125	12,500
Credit balance	500		
	12,500		12,500

Profit, 500 francs.

If the options are abandoned, the account is as follows:

Peter, his settling account for the 15th instant:

Dr.		Cr.	
Purchases.	Francs.	Sales.	Francs.
100 shares at 120/5	Nil.	100 shares at 125/2.50	Nil.
Option abandoned	500	Option abandoned	250
		Debit balance	250
	500		500

Loss, 250 francs.

This combination tends to limit either the profit or the loss.

It may happen that one option will be abandoned and the other taken up. For instance, the rate at the option declaration is 121 francs. The "call" he purchased will be exercised, while the "call" he sold will be abandoned. In this case, Peter becomes the non-optional purchaser of 100 shares at 120 francs, and his purchase price is lowered by the amount of the premium he has received.

(31) Therefore: [1] The "plain option" (*à prime isolée*) suits the purchaser wishing to limit his loss, as

well as the capitalist, the holder of securities, who, by becoming a seller of options, wishes to lessen the lower value he may have to stand.

[2] The operation of "option against non-option" (*prime contre ferme*) suits the capitalist, the holder of securities, who, having sold them, resolves to pay a difference in order to sell more advantageously at a later date. It suits also the "short seller" who wishes to secure himself against an excessive rise. It limits his loss without limiting his possible profit.

[3] The operation "non-option against option" (*ferme contre prime*) suits the purchaser who wishes to reduce his possible loss. It fixes the profit without limiting the loss, but lessens the latter by the amount of the premium.

Finally, [4] the operation of "option against option" (*prime contre prime*) suits the speculator wishing to limit both the eventual profit and the eventual loss.

No doubt, there are other combinations, such as the fixed sale of a certain amount against a purchase on option for double the quantity (operation called *à cheval*, "straddle"); such are purchases and sales of options at different dates, notably "the scale" (*l'échelle*), an operation through which a purchaser sells an option for the present account, and at the same time buys another option for the following account. All these combinations are the result of reflection and are suggested by events.

There is, however, one special operation in options which is of interest—namely, the "*stellage*" (spread); we intend to describe and explain its working, although it is but little used.

(32) The "*stellage*" is an operation through which a party, called *buyer of the "stellage"* (spread), must at a certain date declare whether he is buyer or seller of a certain amount of stocks, as against another party to the contract, called *seller of the "stellage."* This operation is but the synthesis of two supposititious operations, which present themselves, in the case of the purchaser of the "*stellage*," as a *purchase on option* of a certain amount of securities against a non-optional sale of half that amount, and, in the case of the seller of the "*stellage*," on the contrary, as a *sale on option* of a certain amount of securities against a non-optional purchase of half that amount.

For instance, a stock is quoted for the account of the 15th, 100 francs, while the option at 5 francs ("*dont*" *5 francs*) for the same maturity is quoted 120. If Peter purchases the "call" of 100 shares at 120/5 against the non-optional sale of 50 shares at 100 francs, he would, in case he decided to exercise his right at the time of option declaration, appear as a purchaser at a cost price which would be 140 francs. But in case he should abandon the option, the selling price, lessened by the premium of 5 francs per share abandoned on the side of the purchaser, would amount to 90 francs.

Indeed, let us imagine an account in which Peter is buyer of 100 shares at 120/5, and seller of 50 shares at 100. He exercises the option, and in the result he becomes a buyer of 50 shares. In figures, he comes out a debtor for 7,000 francs. The 50 shares cost him, therefore, 140 francs each (7,000 : 50 = 140).

If he abandons the option, he comes out as a seller of 50 shares. The price of his sale (5,000 francs) is lessened

by the amount of the premium of 500 francs he owes. He will therefore be a seller at 90 francs (4,500 : 50 = 90).

If, now, instead of buying the "call" of 100 shares 120/5 against the non-optional (*ferme*) sale of 50 shares at 100, Peter buys a "*stellage*" (spread) at a price expressed as follows: 140/90, he will have the privilege of becoming a purchaser of a number of shares at 140 francs; but at the latest, on the day of option declaration, he will have to declare himself either purchaser or seller.

In case of a great advance or heavy decline, Peter, as buyer of "put" and "call," is sure of a profit. At the price of 140 francs and above, he becomes buyer—he "calls." At the price of 90 francs and below, he becomes seller—he "puts."

But let quotations stand still, the variations remaining at a figure between 140 francs and 90 francs, and Peter will be loser. That loss, however, in the present case would be, at most, 25 francs per share. The loss, indeed, can not exceed for each share one-half of the difference between the figures of the "put" and "call" (140 − 90 = 50; 50:2 = 25).

Indeed, if on the day of option declaration 90 is quoted, Peter, who is bound to declare himself, will certainly not "call" at 140 for stock which he can resell only at about 90. He will declare himself seller, and the rates at the declaration will leave him neither gainer nor loser. Seller at 90, buyer at 90, his account balances, without gain or loss.

But if the price is 91 francs, he will declare himself seller and—

will lose 1 franc on each share;
if 92 francs, he will lose 2 francs on each share;
if 93 francs, he will lose 3 francs on each share;
if 94 francs, he will lose 4 francs on each share;
if 95 francs, he will lose 5 francs on each share;

and so on. As the price at the declaration of options rises above 90 francs, Peter will find it to his interest to "put" at that price rather than "call," and yet he will be loser. Thus, at a price at the option declaration of 115, Peter, declaring himself seller at 90, will lose a difference of 25 francs on each share.

However, it should be noted that when the price at option declaration is 115 francs, Peter might just as well declare himself purchaser at 140 francs as seller at 90 francs. Indeed, if he becomes purchaser at 140 and he resells at the price of the option declaration, 115, he will lose 25 francs on each share, as in the other case.

Above 115 francs it will be to Peter's advantage not to exercise the "put," but to "call;" that is, to purchase rather than sell.

Indeed, if the quotation is 116 francs, then, by becoming purchaser at 140,—

he will lose 24 francs on each share;
if 117, he will lose 23 francs on each share;
if 118, he will lose 22 francs on each share;
if 119, he will lose 21 francs on each share;
if 120, he will lose 20 francs on each share.

The nearer the rate of the option declaration rises toward 140, the less will the loss become. At 140, Peter will experience no loss; above that rate, profit will begin.

Thus the two ends of a "*stellage*" (put and call) present an ascending and descending scale of losses, the apex of which will be the average rate between the two extreme limits. That average rate will determine the maximum loss to which the buyer of a "*stellage*" may be subjected.

It remains for us to look into the position of Paul, seller of the "*stellage.*"

At every intermediate rate, between 140 and 90, he will have a profit in the same proportion as Peter will experience a loss. But, in case of a considerable rise or fall, his loss is limited only by the limit of the fluctuations. Above 140, he runs the risk of being called upon to take up delivery at that price; he is also exposed, if the shares fall below 90, to have to deliver them at that price. Peter, buyer of the "spread," has in his favor the big bourse fluctuations, and against him their slight variations, while Paul, seller of the "spread," has in his favor the comparative stagnation of prices, and against him the great fluctuations.[a]

(33) How are the accounts liquidated? To liquidate is to audit, to settle. The purchaser who exercises his "call" liquidates through the "call."

In the same way for the seller who "puts."

The purchaser who has resold, has liquidated his transaction. But that operation, like the one of the seller

[a] Yves Guyot & Raffalovitch, "*Dictionnaire du Commerce, de l'Industrie et de la Banque,*" under the word "*stellage,*" by Emmanuel Vidal.

who rebuys, only shows liquidation when the accounts have been established. The same applies to the party who loans money for the account, and the party who borrows for the account.

Parties dealing between themselves on the Bourse—stockbrokers between themselves, bankers between themselves—fix a time, called "declaration of options," when they declare what they decide to do. One day later the liquidation proper begins.

Purchasers who do not care to exercise their "call," resell or have their purchases carried over until the next settlement; sellers who do not wish to deliver, rebuy or carry over.

After that, in a common office, the work of central liquidation begins.

(34) To understand the machinery, it is proper to recall that the "making-up" price is a price fixed by agreement, intended to facilitate deliveries and settlement on the bourses and markets.

With this in mind, we shall suppose five people—Peter, Paul, Jack, Will, and Ernst, operating on a hypothetical market.

Peter sold on the Bourse 100 shares to Paul, at 100 francs—that is to say, for 10,000 francs—Paul resold them to Jack at 101, for 10,100 francs; Jack resold them to Will at 102, for 10,200 francs; Will resold them to Ernst at 103, for 10,300 francs. What happens at maturity in case there is no clearing?

Peter delivers the 100 shares to Paul, the latter paying him 10,000 francs. Paul, holding these 100 shares, brings them to Jack, who pays for them 10,100 francs;

Jack calls on Will, hands him the 100 shares, and collects 10,200 francs; finally, Will betakes himself to Ernst, who disburses 10,300 francs and keeps the securities.

This causes considerable disturbance to many people, numerous bookings, carrying around of funds and carrying around of securities.

The clearing system, otherwise called the central liquidation service, has for its object the obviating of all these disadvantages.

It works as follows: Peter, Paul, Jack, Will, and Ernst are requested by the chief of the common service called central liquidation, to settle all their engagements at a rate called clearing price (*cours de compensation*), fixed, let us say, at 101.50.

Thanks to this service there will be no successive deliveries of securities to Paul, Jack, and Will. The delivery of securities will be made from Peter to Ernst exclusively, passing by Paul, Jack, and Will.

The liquidation then centralizes the deliveries of securities between sellers and purchasers. Moreover, it can also collect differences due from the debtors, and pay the creditors, while attending to the handling of the securities.

The account of each party results as follows: Peter sold 100 shares to Paul, and delivers them to Ernst on the indications of the central liquidation, at the clearing price, 101.50. He is credited with 10,000 francs, selling price to Paul, and debited with 10,150 francs, "making-up" price—giving a balance of 150 francs to his debit.

The accounts of Paul, Jack, and Will, will be as follows:

Paul's account.

Dr.	Francs.	Cr.	Francs.
Purchased of Peter at 100	10, 000	Cleared at 101.50	10, 150
Cleared at 101.50	10, 150	Sold to Jack at 101	10, 100
	20, 105		20, 250

Result: A balance in favor of Paul of 100 francs.[a]

Jack's account.

Dr.	Francs.	Cr.	Francs.
Purchased of Paul at 101	10, 100	Cleared at 101.50	10, 150
Cleared at 101.50	10, 150	Sold to Will at 102	10, 200
	20, 250		20, 350

Result: A balance in favor of Jack of 100 francs.

Will's account.

Dr.	Francs.	Cr.	Francs.
Purchased of Jack at 102	10, 200	Cleared at 101.50	10, 150
Cleared at 101.50	10, 150	Sold to Ernst at 103	10, 300
	20, 350		20, 450

Result: A balance in favor of Will of 100 francs.

Finally, Ernst disburses 10,150 when taking up the securities of Peter.

He bought from Will at 103, owing 10,300 francs, and the clearing takes place at 101.50, totaling 10,150 francs. He, therefore, still owes 150 francs on the purchase price.

[a] The two clearings at 101.50 appear in the account. As they are even in the debit and the credit, they could, they even ought, for the sake of good accounting, be taken off the account; but we let them remain, in order to show all that happens within the central liquidation office. Paul has purchased securities for a sum of 10,000 francs, which he owes; he delivers the securities to the central liquidation and receives 10,150 francs. He is credited for it. He sold the shares at 101, for 10,100 francs. He purchases them at the central liquidation at the clearing price, and pays over 10,150. He is debited for it. The same applies to the other accounts.

Hence, the situation in the central liquidation office will appear as follows:

DEBTORS.	Francs.	CREDITORS.	Francs.
Peter	150	Paul	100
Ernst	150	Jack	100
		Will	100
	300		300

With the 300 francs which Peter and Ernst pay, the central liquidation office pays Paul, Jack, and Will.

The clearing price has, therefore, served the following purposes: (1) To facilitate, through the central liquidation, deliveries between dealers in a public market; (2) to permit this central service to fulfill the functions of collector and distributer of money.

The clearing prices are also used for the "carrying-over" operations through loans to the next settlement (*reports*); they also facilitate operations of parties giving orders through different houses.

On the Paris Bourse the clearing price is fixed on the settling day by the syndic of the stockbrokers (*syndic des agents de change*) for securities officially quoted; and by a member on duty in the Syndical Chamber of Bankers dealing in securities for future delivery, for securities in the open market.

(35) In order to give the above remarks a practical import, it is necessary to follow the transactions from the standpoint of the party who gave the orders.

How are orders given? How long do they remain in force? How can they be controlled by the quotation list? On what conditions are orders given in most cases? How can certain special orders in small options

be followed up? Which are the settling days? What expenses is the party who gives orders subjected to? What happens in case of default, either on the part of the party receiving orders or the party giving orders?

For securities negotiated in the official market, purchases and sales may be effected either at the opening price or the closing price, at a fixed price or at best. Trading at the average rate, like trading for cash, is not done without previous special arrangements.

But just as in the *trading for cash* stockbrokers operate before the opening of the session at the *average rate*—that is to say, at a rate unknown at the moment they are dealing, but which will be determined by the quotations entered on the quotation list—in exactly the same way these ministerial officeholders deal *for the account*, on the basis of the *opening price*, before it becomes known. Later, when business opens, the first price entered on the official list will determine the price they traded at. This mode of procedure is not practised in the bankers' market (*Coulisse*).

In the Coulisse orders are given at a fixed price or *at best* (*au mieux*). One may also indicate the moment when his order is to be executed—that is to say, at the opening of the session or at the closing of the session.

(36) According to agreement, orders remain in force for the day, for a week, or until the next settlement, inclusive. It is customary for stockbrokers and bankers to state in their letters of advice that orders "*à revocation*" (good until canceled, "g. t. c.") remain in force for the week, and must be renewed on the following Monday, for want of which they will be considered as lapsed.

(37) In many cases the accepting of orders is subordinate to the deposit of cover (*couverture*).

The cover is a sum deposited by the buyer as an anticipated payment for the taking up of securities to be bought, or for the difference which may occur by a resale, or deposited by the seller to safeguard his delivery or pay the difference in case of repurchase. When it is deposited in the shape of securities "to bearer" (*au porteur*), the party giving the order must, when he deposits the securities, sign an order for the sale of same, should it be necessary.

The stockbroker or banker may reserve for himself the right to demand additional cover (margin), in case events should render the original amount insufficient, and, for want of this being furnished, the right to close out the undertaken transaction for the account. But for this purpose a distinct stipulation is necessary.

Especially in purchases on option (*à prime*), the intermediary has the right to exact that an additional cover be handed to him on the day of option declaration (*au jour de la réponse*), for the event in which the option should be exercised and the purchase declared a fixed bargain, and that, for want of that request being met by the party giving the order, the transaction be closed out at the expiration of the time allowed him for that purpose.

(38) The minimum quantity allowable for transactions for future delivery is determined by the kind of rente. Thus, for rentes 3 per cent it is 3,000 francs rentes, or one-half, say 1,500 francs; for rentes 4 per cent, 4,000 francs rentes, or one-half, etc. For other securities the minimum quantity is 25 units, shares or bonds.

(39) The purchaser for the account has the privilege of demanding delivery before maturity by tendering the money. This is what is called "*faculté d'escompte*" (privilege of discounting). But it should be noted that the same does not occur when the seller has paid "*déport*" (a premium on borrowed stock) at the last liquidation; that is, has paid a certain sum (backwardation) freeing him from immediate delivery by putting off its maturity for a future date. (See No. 24.)

(40) On the curb for rentes (*coulisse des rentes*) options are frequently dealt in at 10 centimes for each 3 francs rentes and at 5 centimes for each 3 francs rentes for the next day; that is to say, by risking 50 francs for each purchase of 1,500 francs 3 per cent rentes when operating "*dont*" 10 centimes, and 25 francs for 1,500 francs rentes 3 per cent when operating "*dont*" 5 centimes. These operations are commonly spoken of as "*dont deux sous pour demain*" (option 2 centimes till to-morrow), "*dont un sou pour demain*" (option 1 centime till to-morrow). The option declaration takes place at 2 o'clock.

(41) The Official Quotation List of the Stockbrokers (*la Cote officielle des agents de change*) establishes only four quotations for transactions for future delivery (*le terme*): The opening (*le premier*), the highest (*le plus haut*), the lowest (*le plus bas*), the last (*le dernier*); but, nevertheless, business is done at intermediate rates (*à des cours intermédiaires*).

The prices of options (*les cours des primes*) appear in the columns reserved for the prices of fixed bargains (*cours du ferme*), and below these prices; but their appearing in this or that column does not indicate at what moment

they are dealt in. The bank (curb) quotations (*les cotes en banque*) give the quotations for the fixed bargains in the following order: Opening, lowest, highest, last (*début, plus bas, plus haut, dernier*). Dealings are also made at intermediary rates. For options two prices are published, the lowest and the highest, without indicating the time in either case.

(42) In the Paris market operations for future delivery are made either for the semimonthly (*à quinzaine*) or the monthly settlement (*à fin de mois*).

On the stockbrokers' market (*au marché des agents de change*) they deal for the semimonthly settlement, except in French rentes and in shares of the *Crédit Foncier* (a French national mortgage loan society, see § 72 of Book IV.—Translator), of the *Banque de France*, and of the railroads, which are dealt in for the end-of-the-month settlement. Options are dealt in for semimonthly or monthly settlement, and in extreme cases for the third liquidation. For securities subject to a single monthly liquidation the maturity of options can not extend beyond the second liquidation. Often dealings are made in options at 10 centimes per 3-franc rentes for the next day (say, 50 francs for 1,500-franc rentes, the minimum of transaction), but no options at 5 centimes, as on the Coulisse. The option declaration for the morrow is effected on the day indicated at 2 p. m.

In the bankers' market (*au marché en banque*), i. e., on the Coulisse, all transactions for future delivery (*opérations à terme*) are made for maturity at the end of the month (*à l'échéance de fin de mois*). Options are dealt in for one, two, or three months. The latter case rarely

occurs. The small operations in options on the *coulisse des rentes* have been mentioned above. (See No. 40.)

Following is the order of the fortnightly settlement (*la liquidation de quinzaine*):

On the 14th (or the 13th, if the 14th is a holiday) option declaration takes place at 1.30 p. m. The 15th (or the day following, if the 15th is a holiday) is for liquidation of operations. The next day, for making up and forwarding accounts. On the day following the debtors must settle. Two days later the creditors' accounts are paid.

The end-of-the-month (*ultimo*) liquidation is carried on as follows:

The day before the last day of the month (or two days before in case of a holiday) option declaration takes place at 1.30 p. m. The last day of the month (or, if that is a holiday, the first session of the following month) is set for liquidation, sales, purchases, and carrying-over operations, or continuations (*reports*). The following day, for making up and forwarding accounts. The day after, for payment of debtor accounts. Two days later, for payment of creditor accounts.

It should be noted that, while the option declaration preceding liquidation is effected at 1.30, the declaration of options for the next day takes place at 2 p. m. However, on the day of option declaration preceding liquidation the declaration takes place at 1.30 for *all* options given for that maturity, including those made the day before.

On the day of liquidation some trades are made for the running account (*en liquidation courante*) and some for the next account (*pour la liquidation prochaine*); the rates for

transactions made for the next account include the cost of carrying over. The party giving an order must therefore specify whether his order, given on settling day, shall be executed for the running account or for the next account. In the absence of precise instructions the order is executed for the running account.

(43) As far as possible, parties giving orders must see that their instructions for the liquidation be received before the "*jour des reports*" (contango day). "*Reports*" (continuations) being transacted on the last bourse day of the month, the instructions referred to must be received on that day before noon at the latest. It is better by far that they be given the day preceding. In case of deliveries of securities, they must reach the intermediary agent, at the latest, at the fourth session of the following month. All cases for the account, buying or selling, for which instructions (to take up or carry over purchases, to deliver or carry over sales, or to clear) are not received before the bourse opening on the morning of the "*jour des reports*" (contango day), may be officially extended until the next liquidation.

The remarks we made as to the condition of securities to be delivered, when we spoke of operations for cash, are, of course, also applicable to operations for future delivery. We shall now show what happens in case of default on the part of an intermediary or of a party giving orders. Then we shall speak of expenses occasioned by operations for future delivery.

(44) In case of default of an intermediary, the syndical chamber of the corporation or syndicate to which he belongs immediately takes the measures rendered

necessary by the circumstances. It purchases back the securities he sold, it resells the securities he purchased, and the creditors can then enter their claims against cash assets. This is called "*exécution*" (buying-in or selling-out). The parties having given orders, on finding themselves thus liquidated, must file their claims.

The party who gives orders, when he defaults in his engagements, may also be "executed" (*exécuté*). The effect of failure on a business man is loss of the advantages of dealing for the account. The same thing happens if, owing to any act of his, he reduces the guarantees given to his intermediary, or, likewise, if he declares himself insolvent, and so demands his own "execution." However, the delay which a speculator makes in settling his "liquidation" account (*compte de liquidation*—the account to be settled on liquidation days) does not, in principle, cause him the loss of the advantage of future delivery; but if on the last day of "liquidation" a speculator whose transactions had been carried over has not settled his account, the stockbroker has the right to liquidate his affairs. After that date the stockbroker no longer has the right to proceed to "execution," unless he has notified the giver of the order that he would carry him over only in case he was ready to settle within a given time.

While the right of "execution" during the liquidation is granted to the stockbroker (*agent de change*) by article 69 of the decree of October 7, 1870, that right is denied to the curb broker (*coulissier*). But nothing prevents the banker from making an express agreement with his client to carry his stocks over only on condition

of immediate settlement of the "liquidation" account of previous transactions.

(45) Expenses for transferring registered certificates taken up during the settling days are borne by the purchasers. As explained, when speaking of operations for cash, they amount to 0.75 per cent of the amount of the trade.

Transactions are subject to brokerage or commission charge, a table of which follows. The present rate of brokerage of Paris stockbrokers dates from July 22, 1901; it was decreed by the Minister of Finance, under whose direction are the stockbrokers trading on bourses provided with "parquets." The rates are as follows:

French rentes	12.50 francs for 1,500 francs. Rente 3 per cent perpetual or amortisable.
Funds of foreign countries dealt in, amounts of principal or in rentes.	25 francs for the smallest denomination negotiable for future delivery, and so on in the same proportion.
Shares and bonds:	
For shares and bonds when their price is below 250 francs.	25 centimes for each share or bond.
For shares and bonds when their price is between 250 and 500 francs.	50 centimes for each share or bond.
For shares and bonds when their price is above 500 francs.	One-tenth per cent of the amount of the bill.
Operations in "*Reports*" (continuations) in French rentes.	12.50 francs for 1,500 francs of 3 per cent rente, perpetual or amortisable, and for 1,750 francs of rente 3½ per cent.

On all other securities:	
For securities subject to bi-monthly settlement.	One-twentieth per cent of the amount of the bill.
For securities subject to monthly settlement.	One-twelfth per cent of the amount of the bill.
An exception made for foreign securities, the price of which is above 60 francs.	15 centimes for the smallest denomination negotiable for future delivery, and so on in the same proportion.
For the smallest amount dealt in for future delivery on foreign securities.	25 centimes.
For securities, the price of which is less than 200 francs.	25 centimes per certificate.
For securities worth from 200 to 400 francs.	50 centimes per certificate.
For securities worth above 400 francs.	One-eighth per cent (12.5 centimes per 100 francs) on the amount of the bill.

The above prices apply to all certifications of signatures given by stockbrokers, even when not attached to a purchase or a sale.

For securities not fully paid in, the fees given above are figured only on the net amount of the bill, after deduction of the part not yet paid in.

Two transactions during the same session, one purchase and one sale, are subject to a commission, calculated only upon the item giving the larger figure. The "franco," however, does not apply in the case where one transaction is for cash and the other for future delivery.

On the Coulisse (*marché en banque*), the usual commissions are as follows: For French rentes: 12.50 for each 1,500 francs of 3 per cent rentes.

For the smallest amount negotiable for future delivery in foreign state securities, 25 francs.

For securities the price of which is below 50 francs, 25 centimes per certificate

For securities the price of which is between 50 and 400 francs, 50 centimes per certificate.

For securities the price of which is above 400 francs, one-eighth per cent (12.5 centimes per 100 francs) of the amount of the bill.

The commission is reduced by one-half for abandoned options "*dont*" 10 centimes (of which 10 centimes shall be forfeited) on French rentes.

Continuations are subject to full commissions, and not to the special rates of commissions for continuations on the Parquet.

FOURTH DIVISION.—*Exchange—Concerning the negotiation of bills of exchange and precious metals.*

(46) Article 76 gives to stockbrokers the privilege of alone negotiating bills of exchange for account of others. For a long time the stockbrokers have given up that prerogative, and, in fact, they do not negotiate a single bill of exchange; that branch of business is carried on, unrestricted, by a group of special brokers, whose transactions fix the rates, the stockbrokers intervening only to give them the official trade-mark.

It is proper to investigate that business: we should indicate in a few words what is the bill of exchange; and, because it is treated like a commodity, subject to the fluctuations of bids and offers, we should ascertain what useful purposes have been served by its transformation into a thing fungible to the highest degree.

(47) We need not study here the exchange contract from a theoretical standpoint. It will suffice for us to say that, created for the settlement of *private* claims, the bill of exchange in its circulation becomes endowed with

the functions of insuring *international* settlements without regard to persons. Hence, there results the more or less active quest for that money, giving rise to the advance or decline in its purchase price, within limits which we shall have to determine.

How does the letter of exchange, originating in private relations, turn out to be an object of trade?

Let us suppose that Peter, of Paris, is indebted to Louis, of London. Is he going to settle in metallic currency or bank notes, by taking upon himself the heavy cost of freight and insurance? It is simpler to purchase a bill of exchange, drawn, for instance, by Paul, in Paris, on Lucien, in London. He will indorse it to Louis, who will collect it from Lucien, so that, simultaneously, and without the transmission of metallic currency, Peter will have settled with Louis, and Lucien with Paul.

Let us note that in Paris both Peter and Paul will have found profit in the transaction—the one by paying his debt, the other by collecting his claim—without the transfer of metallic currency.

Therefore, the seller and purchaser of bills of exchange find it advantageous to meet. It is then the business of the broker to make their offers and bids coincide.

(48) The debates on offers and bids fix the quotations. If Paris has made large purchases in London, and London, on the contrary, is but slightly indebted to Paris, bills of exchange on London will be high; in the opposite case, they will be freely offered, and their price will fall. But whether rising or falling, exchange rates have a limit; when rising, it is the point where the debtor would find it more profitable to insure payment in cash

than to buy paper at too high a price; when falling, it is the point where the creditor, rather than sell his paper at a low price, would find it advantageous to effect the collection in his debtor's home country; in both cases, that limit is what is called the "gold point"—"export" point of metallic currency in the first case, and "import" point in the second.

(49) Such are the principles which govern the rates of exchange. We leave aside considerations having reference to the relations between exchange quotations and the *general economic* condition or the *monetary* condition of any given country.

Having established the principles, we shall ask ourselves only one question: How can securities, which differ from one another either by the signatures bringing them into existence, or by the interval between the moment of the negotiation and the time of payment, be brought to a common trading basis; or in other words, how can the bills be measured in terms of each other; how are the exchange quotations made?

What is purchased by the party who becomes possessed of a bill of exchange? He purchases the right to collect the face value of the bill, but only after a certain time. Besides, it should be noticed that the certainty of payment is subject to the solvency of the vouching signatures.

Hence, these two consequences, the second of which has but a theoretical value: (1) The purchaser, in consideration of the discount up to the time of collection, will be entitled to an allowance on the face value; (2) two bills drawn for the same face value, and payable within the same length of time, should be quoted at two different

rates, in accordance with the rating of the signatures. We shall see that, in fact, this second consequence does not occur on the Paris market.

(50) These remarks permit us to explain the exchange quotations as published by the *Union des Banquiers*.

Below you will find the quotation list of October 17, 1908:

	Check payments, short paper.	Three months' paper.	Discount abroad.
			Per cent.
London	25/8 to 25/11	25/10 ⅛ to 25/13 ⅛	2 ½
Germany	122 ¾ to 123	122 1/16 to 123 3/16	4
Belgium	99 ½ to 99 ⅝	99 ⅝ to 99 ¾	3
Spain	446 to 451	444 to 449	4 ½
Holland	207 1/16 to 208 7/16	208 to 208 ½	3
Italy	99 1/16 to 99 1/16	99 ¾ to 100	5
New York	513 ¾ to 516 ¾	512 ½ to 515 ½	6
Portugal	451 to 461	449 to 459	6
St. Petersburg	263 ⅛ to 265 ⅛	262 ½ to 264 ½	5 ½
Switzerland	99 1/16 to 99 1/16	99 ⅛ to 100	3 ½
Vienna	104 9/16 to 104 11/16	104 9/16 to 104 11/16	4
Discount street rates:			
Paris			2 ½
London			1 ½
Brussels			2 ½
Bank of France discount			3
Interest on advances			3 ½
Treasury bonds:			
One to three months			1
Three months to one year			1 ½

The rates are fixed for sight [a] exchange—that is to say, as if the payment was demandable immediately; but on

[a] The quotation at sight has been in use since May 1, 1907; previously, a difference was made as to whether bills were negotiated at sight or at three months. In the first instance, an allowance was made, as nowadays, to the benefit of the purchaser, for the time that he might have to wait; in the second case, on the contrary, the rates having been established by figuring on the delay of three months, if the time to run until maturity was less, it was the seller who got the benefit of the discount for the difference; in the first case the rate was given less discount, and in the second case the rate was given with discount.

these rates the purchaser is allowed for each bill, on account of the time he has to wait, a deduction of interest for the time the bill has to run, in accordance with the rate of discount ruling in the country where the payment is to be effected; that rate is given for each place in the column on the right.

One can see that the rates given swing between two extreme limits; for instance, three months' paper on London is quoted between 25.10½ and 25.13½ per pound sterling. These indications do not correspond, as the rates given for bourse securities do, to rates actually traded on during the session, but to extreme limits, between which the average rate is fixed. Some authors state also that quotations vary between these limits, according to the status of the signatures; but, in fact, on the Paris market, dealings are made as if all signatures were equally good.

(51) The exchange quotation list comprises two divisions, under two series of different rates; one devoted to "short paper," the other to "long paper."

"Short paper" is paper payable within one month; "long paper" is paper which has more than one month to run.

Given that a deduction of interest is made on the exchange rate of every bill according to the time elapsing until its payment, it would appear that a single quotation would be sufficient, since the delay is compensated for, day by day, by a reduction in price. However, the necessity for double quotation is caused by a real duality of markets for "long paper" and for "short paper."

From an economic standpoint, indeed, these two categories of bills do not play the same part. The function

of the "short paper" is restricted to that of an instrument of payment; its value is, therefore, solely regulated by local conditions.

When, on balance, Paris is London's debtor, paper on London is sought; if, on the contrary, London is shown to be a debtor, the rates on London will fall. In the first case the exchange is said to be unfavorable; in the second case it is called favorable.

(52) Offers and bids for "long paper" are influenced, not only by local conditions, but also by other causes.

First of all, there are purchasers who buy paper as an investment. "The rate of interest is, therefore, their chief concern. The rise of the discount rate on one place, above the rates prevailing on the other places of the same order, will instigate a more active demand for long bills, and will tend to cause the price to rise."[a] Especially, railroad companies often invest their idle funds in purchases of bills of exchange.

Secondly, "long paper" comprises a speculative element which is missing in the "short paper"; that element is the profit which the purchaser may realize by getting his paper discounted privately at a rate lower than the official rate prevailing in the country where the payment is to be effected. That is, there will be a profit which will amount to the difference between the discount deduced by inference from the exchange rate (official discount), and the actual discount at which he will have the bill discounted privately; the profit will naturally be greater as the maturity is further removed.

[a] See article on Exchange, by M. Aug. Arnauné, in the *Dictionnaire d'Economie Politique* of Léon Say.

Guided by the same considerations, bankers often undertake what is called the "pensioning" ("*mise en pension*") of "long paper." For instance, they buy exchange on London at 2⅛ and then "pension" it until maturity in one of the large banks, which retains 2 per cent. They get the benefit of one-eighth, which is the difference between the rate of discount applied in the market and the "pension" rate. As to the large banks where paper is "pensioned," if they do not take it for their own account, it is because they may have reasons for portioning out their risks and for scattering the responsibility, in consideration of a trifling difference. Moreover, they have the advantage of not running any risk as to exchange. The bills are not indorsed to them; they hold them on deposit and surrender them at maturity to the depositor, who undertakes the collection or negotiation.

Thus, "short bills" and "long bills" are two distinct kinds of merchandise, answering different requirements, the prices of which vary under distinct influences; hence the two series of quotations.

(53) We shall have done with these short notices on the exchange quotations, after saying that in Paris they quote "*l'incertain*"—that is to say, they quote in national money the rate of a fixed quantity of foreign money. This is the general rule, and among foreign cities there are but London and St. Petersburg where the "certain" is quoted—that is to say, where the price of a fixed sum in national money is quoted in foreign money.

Except London, for which the price quoted is that of the pound sterling, and Spain, where the quotation price

of 500 pesetas is given, the Paris market quotes the price of 100 units of foreign money—100 florins for Holland, 100 marks for Germany, 100 crowns for Vienna, 100 rubles for St. Petersburg, 100 dollars for New York, and 100 francs for Belgium, Switzerland, or Italy.

(54) Each day the quotation list, decided upon by a committee of bankers and brokers, is transmitted to the Association of Stockbrokers (*Compagnie des Agents de Change*), who publish it below the Official Quotation List.

Indeed, as we stated in the beginning, the stock brokers (*agents de change*) have not only long ago given up their monopoly in this sphere, but do not negotiate bills of exchange even in competition with the free merchandise brokers (*courtiers*). The negotiations are made on the bourse for securities (*bourse des valeurs*), either directly between bankers or through the mediation of exchange brokers (*courtiers de change*).

(55) How are the transactions carried out?

Every day at bourse time the brokers and representatives of bankers gather in a hall specially reserved for them. Transactions which could not be settled in private, are brought out before the gathering (rather restricted, however), where quotations are established by auction, just as before the large crowds of the market in securities.

Merchandise brokers selling paper may mention the name of their principal, or, if the latter considers it to his advantage not to disclose himself, they do not divulge his name to their purchaser until after the meeting. Here, again, a difficulty would present itself concerning the specification of the thing sold, if custom did not solve it in a general way; indeed, it may happen that such and

such a house has always declined the acceptance, or now declines the further acceptance, of this or that signature, which it does not trust, or of which kind it has already a sufficient number on hand; but then, either the broker knows beforehand that his paper will not be taken by this or that fellow-broker who is a buyer, or, if the trade is concluded and the paper not taken, the matter is settled through a fellow-broker by means of the "*passage de noms*" (passing of names).

Generally, the broker deals for his own account, and then settles with his client at the average rate, taking his profit in the rate; certain houses, however, content themselves with closing the transaction at the actual rate, reserving for themselves a brokerage, which, while not officially fixed, is nevertheless established by custom (for instance, one-half to one-fourth centime for exchange on London; one-sixteenth to one thirty-second centime for exchange on Berlin).

In his intercourse with his fellow-dealers the broker binds himself only to deliver the paper; if his principal does not deliver it, he must procure it, losing perhaps the difference in price. But he is not responsible for payment at maturity, as he has not indorsed the paper. The loss falls on the principal who agreed to take the signature.

Exchange business is acquainted with "short" sales. One can sell 1,000 pounds sterling at such and such a rate, deliverable in eight days; he has then eight days within which to procure the paper. Transactions for future delivery are made for rather short periods—eight, fifteen

days. Transactions are sometimes made for a longer period, but rarely for three months.

Contracts are always followed by deliveries. Contracts to be settled by payment of differences are not customary.

(56) Gold and silver are dealt in in bars 1,000 fine—that is to say, absolutely free of any alloy.

Gold.—Prices are quoted on so much per 1,000 premium or loss, and are based on the value in money of a kilogram of gold, after deducting coinage charges, say net 3.437 francs for 1 kilogram.

Silver.—Since January 2, 1901, prices are given in francs; this means that the official quotation list expresses in francs and centimes the cost of the kilogram silver fine.

FIFTH DIVISION.—*Bourses in the departments.*

(57) In examining the bourse system, one has chiefly—almost exclusively—in mind what relates to the Paris Bourse. However, the French financial market also comprises provincial bourses, the importance of which has greatly diminished as business centered on the Paris market, but whose activity is still maintained by transactions in local securities.

The monopolizing of business by the Paris market has given rise to recriminations, which have been taken up by the newspapers. Sundry remedies have been recommended for the purpose of giving a new lease of life to provincial bourses, which complain of painfully vegetating. It is not this phase of the question which we have to pass upon here; we desire only to indicate in a general

way some of the interior regulations by which these bourses differ from the Paris institution.

(58) Provincial bourses are divided into two categories: The bourses with "parquets" (*bourses à parquet*), and the bourses having no "parquet" (*bourses sans parquet*). "Parquet" means a slightly raised floor surrounded by railings and reserved for the stockbrokers, which permits the public to find them and keeps them isolated while they trade.

The provincial bourses provided with a "parquet" are those of Lyon, Bordeaux, Marseille, Nantes, Toulouse, and Lille. The Nice "parquet" was done away with in 1887. According to the terms of article 14 of the decree of 1890, bourses comprising at least six offices may by decree, and after fulfilling certain formalities, be provided with a "parquet." At present Dunkirk is, in fact, the only place which has more than 6 stockbrokers and is not provided with a "parquet;" it is true that the 11 *agents* who trade there, are, at the same time, insurance brokers and ship-brokers-interpreters (*courtiers interprêtes et conducteurs de navires*).

The differences between bourses "*à parquet*" and the bourses without a "parquet" are not important. First of all, in the first category, stockbrokers depend upon the Minister of Finance (decree of July 2, 1862), while in the second category they depend upon the Minister of Commerce (or upon the Minister of Colonies when they carry on business in a French possession). (See ordinance of July 3, 1816, and April 6, 1834.)

In the "parquet" bourses a syndical chamber must be elected each year; the number of members varies,

according to the number of members in the corporation. (Art. 17 of decree of 1890, modified by decree of June 29, 1898.)

In the bourses without a "parquet," the general meeting of stockbrokers and the tribunal of commerce exercise the same corporate privileges which, in the "parquet bourses," are exercised by the syndical chamber (introduction of successors, honorary memberships, etc.).

It is questionable whether the consent given by a syndical chamber to the nomination of an unworthy stockbroker may entail its responsibility toward wronged third parties. It is clear that the same question does not exist with regard to the general assemblies which in the bourses without "parquet" fulfill both functions. But as far as syndical chambers are concerned, the question does not seem to us to be definitely settled in the matter of responsibility.[a]

Syndical chambers have, in addition, disciplinary powers. All syndical chambers, since the decree of 1890, have the power to impose penalties. Before that decree only the syndical chamber of Paris had that power conferred upon it by an ordinance of May 29, 1816.

According to the terms of article 23 of the decree of 1890, the penalties which may be pronounced by the syndical chamber are disapprobation, censure, and interdiction to enter the Bourse for one month. It expressed its opinion on graver penalties (suspension and revocation).

From the standpoint of discipline, the stockbrokers of bourses without a "parquet" are placed under the authority of the mixed syndical chambers, established in accordance

[a] Lyon, Caen & Renault. *Traité de droit commercial*, vol. 4, No. 883.

with the decree of January 5, 1867, and which are the same as those for insurance brokers, and for ship-brokers-interpreters.

Let us add that in all corporations having a syndical chamber there is established a common fund, the management of which is intrusted to the syndical chamber. (Decree of October 7, 1890, art. 26.)

We may mention also that in the "parquet bourses" the decree of October 1, 1862, adds to the qualifications demanded from candidates for the office of stockbroker, that they produce a certificate of fitness and respectability signed by the heads of several banking or commercial houses.

Finally, several decrees have conferred on stockbrokers acting on "parquet bourses" the right to certify the transfers of registered certificates of rentes of the sundry types made payable in the treasury office of the department where they do business, provided these transfers are for other registered certificates. (See especially for the rente 3 per cent the decree of May 28, 1896.) A decree of December 24, 1896, has extended their sphere to all registered rentes, without distinction, and whatever may be the department in which the arrears are ordered to be paid.

BOOK III.—*Judicial considerations on the monopoly of stockbrokers.*

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(1) By the words "*bourse transactions*" are meant transactions in a *public market.*

When a party enters a money changer's office and purchases from him or sells to him for cash or future delivery one or more shares or bonds, he does not exactly conclude a bourse transaction, but a transaction in bourse securities.

On the other hand, if he gives a bourse order, which the receiver of the order will carry or cause to be carried to the market, the execution of that order is a bourse operation.

If a banker, to replenish his stock, goes to the Bourse and purchases this or that quantity of securities for cash or for future delivery, non-optionally or by means of options; if a speculator, noticing a difference in price of a certain security in a foreign market and on the French market, undertakes an arbitrage by buying and selling alternately in one and in the other, or vice versa—these are bourse transactions.

Often, however, in the ordinary business conversation, we call bourse operations not only those effected on the Bourse itself, but those that bear upon bourse securities. It is not a rare thing to hear people who have purchased securities in an office and resold them there, declare that they have made bourse transactions. It is because the object of the contract is confused with the premises where the transactions are effected. It is therefore the duty of those who are called upon to arbitrate difficulties arising from transactions in securities, to ascertain whether the transactions were trades made privately, outside the Bourse, or were transactions in a public market.

In private trades the contracting parties are bound by their agreements. In bourse transactions the laws and bourse customs govern the transactions and their customers.

(2) The first way to transact business in securities is the one which presents itself naturally to the mind: it is the *direct trade*, privately concluded; it is the one that

has for a main condition the relation between buyer and seller, who know each other.

Peter enters Paul's banking house; he purchases 10, 20, 100 shares or bonds. This is the *direct trade*, privately concluded.

But if Peter has given *an order* to Paul, if Paul, who receives the order, transfers it to the Bourse, where it is carried out apparently for him, but in reality for his client, Peter—that has been a *commission trade*. Most of the bourse transactions are *commission trades*.

(3) Bourse transactions are, therefore, such transactions as are carried out on all public markets in all kinds of merchandise. Indeed, in every market they trade for cash and for future delivery, non-optionally and on options, and we see there buyers who declare themselves ready to take up merchandise, sellers who declare themselves ready to deliver, purchasers who resell, sellers who buy back, buyers who borrow for the account, and sellers who carry over the execution of their contract until the next settlement.

Whether it be a question of securities or merchandise, the mechanism of transactions is the same. Only the organization of the markets differs in the two cases. While, in the case of merchandise, brokers enjoy no privileges whatever, the stockbrokers, who are commission agents operating on the Bourse for securities, enjoy a monopoly. They alone may negotiate government securities and other securities susceptible of being quoted.

Merchandise bourses differ from bourses for securities, not only by the nature of the articles dealt in, but also by the fact that the carrying on of the commission business is untrammeled in the former and is not in the latter.

There existed, indeed, a monopoly of commercial brokers, which had been established for merchandise, prior to the Revolution, at the same time as the privilege of the stockbrokers, and which, together with the latter, had been suppressed in 1791 and reëstablished in year IX of the Revolution. But the commercial brokers' privilege was suppressed by the law of July 12, 1866.[a]

Whatever may be the strength of the reasons broached for or against the discrimination, the monopoly of stockbrokers still exists, in law and in fact. We should now investigate its nature, its scope, and the laws protecting it.

(4) Stockbrokers are *intermediary* agents.

Article 74 of the *Code de commerce* expressly ascribes to them that character: "The law," says the article

[a] MM. Lyon, Caen & Renault, in their treatise "*Droit Commercial*," *Tome* IV, note under No. 1035, call attention to the fact that in 1866 nobody demanded the suppression of the stockbrokers' monopoly. Sundry reasons were advanced in favor of its preservation. Their part is not limited to negotiating stock-exchange securities; they certify to the identity of persons and the correctness of signatures for the transfer of government and other securities; they are necessarily depositaries of large sums and numerous securities for a certain length of time; every day they verify the prices of securities and especially government securities. Thanks to the monopoly of stockbrokers, the Treasury can enjoy a perfect safety for transfers where its responsibility is drawn upon; transactions are effected with great rapidity; and the interests of inexperienced persons who have to deliver securities and money are protected. Such is the summary of the reasons given by the Government in the explanatory statement of the law of July 18, 1866 (V. J. Bozerian, *De l'Institution des agents de change*). MM. Lyon, Caen & Renault answer: "The arguments advanced in favor of the stockbrokers' monopoly are not conclusive. The mediation for the negotiation of securities has in itself no official character. Besides, it could be imagined that freedom prevailed in this matter, and that, without any monopoly, measures could be taken for the verifying of quotations and avoiding the most serious abuses. Moreover, there are numerous States where there is no monopoly, either for brokerage in merchandise, insurance, or freight, or for the mediation in the matter of negotiating securities, and yet the freedom does not appear to give rise to complaints."

referred to, "takes cognizance of *intermediary agents*, * * * the stockbrokers."

They must keep secret the name of parties for whom they operate. The obligation of secrecy is imposed upon them by article 19 of the decree of 27 Prairial, year X.

They are not permitted to operate for their own account. Article 85 of the *Code de commerce* forbids it to them. The result is that *apparently* they deal under their own name, and *in reality* for account of their customers.

If one stops to think for a moment of the nature of a transaction of a qualified intermediary, who is not permitted to reveal the name of his principal and not allowed to deal for his own account, he will easily recognize that the transaction presents all the signs of commission. Article 94 of the *Code de commerce*, moreover, says expressly: "The commission agent (*commissionnaire*) is one who acts in his own name, or under a firm name, for account of a principal."

(5) The law says (art. 74 of the *Code de commerce*) that it *takes cognizance of intermediary agents*.

But is one really bound to engage an intermediary when he wishes to transact bourse operations, even on the Bourse?

No; the law has never said that.

Everyone is free to buy, even on the Bourse, for his own account.

Thus it was that Tribun Alexandre, who in the year IX was reporter of the law of 28 Ventôse, said in his report:[a] "No doubt, nothing prevents two citizens, who trust each other, from making contracts between themselves,

[a] *Archives Parlementaires*, pp. 608 to 610.

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and without intermediary, concerning a matter mutually satisfactory. But it would show a poor knowledge of the spirit of what we call business, to infer from that fact that stockbrokers are useless. It happens frequently that he who, for private reasons, or owing to necessity, determines upon selling the security or the merchandise he owns, does not want to be known, and that the one who has funds for investment, does not wish to be known either. From that results the necessity of an intermediary to facilitate the sale to one and the purchase to the other."

The law forces no one to apply to a stockbroker. But any banker, any receiver of orders, who has obtained a bourse order or instructions to carry out a commission, must apply to a stockbroker, since only a stockbroker can seek a purchaser for his seller and a seller for his purchaser.

The stockbroker has a privilege of monopoly as "*commissionnaire*" (commission agent). No one can exercise the functions of "*commissionnaire*" on the Bourse or outside the Bourse except the stockbrokers.

(6) The extent of the monopoly is fixed by article 76 of the *Code de commerce*. It is of moment to recall to mind the full text thereof:

"The stockbrokers, organized in the manner prescribed by law, have alone the right to negotiate government securities and other securities susceptible of being quoted; to negotiate for account of others bills of exchange, notes, and all other commercial instruments; and to verify the quotations thereof.

"Concurrently with merchandise brokers, the stockbrokers may attend to negotiations and brokerage for sales or purchases of metals. They alone have the right to verify the quotations thereof."

The *Code de commerce* dates from 1807.

In reality, it is not that text which gives the stockbrokers their privilege.

The text which gives that privilege is a prior one, articles 6 and 7 of the law of 28 Ventôse, year IX (19 March, 1801), thus expressed:

"ART. 6. In all cities where there is a Bourse, there shall be stockbrokers and commercial brokers appointed by the Government.

"ART. 7. These stockbrokers and commercial brokers, who shall have been appointed by virtue of the preceding article, shall alone have the right to exercise the profession, to verify the quotations of exchange, the quotations of government securities, merchandise, gold and silver bullion, and to testify before courts and arbiters to the truth and to the quotations of negotiations, sales, or purchases."

When the *Code de commerce* was compiled, the attention of the lawmaker was not occupied with the idea of expanding the functions of the stockbrokers, but only with the idea of specifying them.

(7) "Stockbrokers alone have the right to make negotiations," says the *Code de commerce.*

What negotiations are meant? Evidently, negotiations of intermediaries and commission agents, since the law has qualified stockbrokers as intermediaries, and has made it their duty to transact business apparently for themselves and in reality for their customers.

In other words, the lawmaker gives to the stockbrokers the monopoly of the negotiations he intrusts them with. He did not wish to say that every commercial transaction in securities should be made through a stockbroker. He wanted to say that, having created intermediaries who alone have the power to act as such, negotiations of mediation should be exclusively reserved for them.

(8) While carefully reading article 76 of the *Code de commerce*, one becomes aware of a difference in the wording relative to the negotiation of government and other securities, on the one hand, and negotiations of bills of exchange, notes, and commercial instruments, on the other.

Article 76 of the *Code de commerce* says, indeed, that stockbrokers alone have the right to make negotiations in government and other securities susceptible of being quoted, and to make, *for account of others*, negotiations in bills of exchange, notes, and commercial instruments.

Why these words *for account of others?*

A suspicion crosses one's mind. Why has the lawmaker taken the trouble to say that the stockbroker, so far as bills of exchange, notes, and commercial instruments are concerned, acts *for account of others*, and did not say that for other securities? Is it with a view to lay down the rule implicitly that for the other securities he alone may make *all negotiations*, and that, consequently, private individuals can not act for their own account?

This would be making a big mistake. The lawmaker never enjoined, and never would enjoin, upon anyone to have recourse to an intermediary—could not have wanted to do so by means of a mere difference in wording, by some sort of subterfuge.

Moreover, this difference in wording may be rationally explained. In the matter of bills of exchange there can be no secrecy. The indorser of a bill of exchange will necessarily be known to the purchaser. In consequence, the stockbroker, not being able to indorse the bill of exchange himself, since he could not be responsible if unpaid, is bound to make the name of the seller known to the purchaser.[a] The negotiation, therefore, in itself already carries with it the pointing out of the party for whose account it is made.

Consequently, there is no cause to dwell upon the argument drawn from the words "for account of others" with a view to maintain that the coöperation of a stockbroker is always necessary for the purchase or the sale of securities.

But the stockbroker has a monopoly of operations belonging to an intermediary, and it remains true that most transactions in bourse securities (excluding those made over the counters of money changers and bankers in their offices) are made under the *commission system* and imply the resorting to an intermediary, and, consequently, must be made through stockbrokers.

(9) However, is it necessary to employ a stockbroker for the negotiation of all transferable securities, whatever they may be?

[a] According to the terms of article 10 of the decree of 27 Prairial, year X, the stockbroker can not indorse a bill of exchange. According to the terms of article 25 of the decree of 27 Prairial, year X, the negotiation of a bill of exchange makes its examination a necessity. Therefore the stockbroker states for whose account he is trading.

It should be recalled that in practice stockbrokers never negotiate bills of exchange.

No; article 76 of the *Code de commerce* includes within the privilege only *government and other securities susceptible of being quoted.*

What is meant by "*effets publics*" (government securities)? There is no legal definition as to what securities may be thus termed. We can only refer to authors. We refer to Volume IV of the *Traité de Droit Commercial* of MM. Lyon-Caen & Renault.[a]

"In the category of '*effets publics*,'" they say, "are reckoned the securities issued by the *duly constituted authorities* (especially the rentes of the French Government or of foreign Governments, securities issued by the departments or townships, French Treasury bonds, which form the floating debt, etc.), or issued *by permission of the authorities* (shares and bonds of railroad companies, shares and bonds of corporations created with the authority of the Government by virtue of article 37 of the *Code de commerce*). On the other hand, similar securities issued by private corporations, not subject to preliminary authorization, are not "*effets publics.*"

(10) What is meant by the words "and others susceptible of being quoted?"

The words "and others susceptible of being quoted," which appear in article 76 of the *Code de commerce*, have given rise to several interpretations.

[a] No. 890. MM. Lyon-Caen & Renault themselves call attention in a footnote to the fact that their solution is in accordance with the one given by Mollot (*Bourses de Commerce*, Nos. 123 et seq.); Buchère (*Traité de Valeurs Mobilières*, No. 68); Bozerian (*La Bourse et ses Opérations*, Nos. 45 and 412); Ruben de Couder (*Dictionnaire de Droit Commercial*, under the words "*agents de change*," Nos. 91 and 92); and *Pour l'Ancien Droit, Nouveau Denisart*, under "*effets publics.*"

According to some authors [a] these words apply to all securities which, owing to their intrinsic nature, are, at any moment, without distinction whatsoever, qualified to be quoted on the bourse list. According to other authors [b] we should estimate the prominence attached to any given securities, and consider as susceptible of being quoted only those which, by their importance and their great number, would be likely to attain a wide circulation, leaving out negotiable values that are *little* known in the market and have no pretension to being quoted.

Finally, a third system highly praised by MM. Lyon-Caen & Renault in their "*Précis de Droit Commercial*," and given up by them in their "*Manuel*" and in their "*Traité*," decided that those securities were not susceptible of being quoted which, either on account of their intrinsic nature or on account of any legal or reglementary interdiction, can not be admitted on the official list.

The court of cassation (*Cour de cassation*), by means of three decisions, of July 1, 1885 (*S.* 1885, 1. 257, *D. P.* 1885, 1. 386), February 10, 1886 (*Dr. fin.* 1888, p. 222), and March 9, 1886 (*S.* 1886, 1. 222, *D. P.* 1886, 1. 266), has sanctioned a fourth system, including in the expression "securities susceptible of being quoted" only those which were declared qualified to be placed on the bourse quotation list by the Syndical Chamber of Stockbrokers—that is to say, which fulfill the conditions exacted for that purpose, without, however, the necessity of discriminating whether they have actually been quoted or not. The

[a] Mollot, *Bourse de Commerce*, No. 123; Badorride, *Bourses de Commerce*, Nos. 204 et seq.

[b] Boistel. *Précis de Droit Commercial* No. 683. Buchère, *Traité des Opérations de Bourse*, No. 140; Labbé. Note, *Sirey*, 1881, 1. 289.

words "securities susceptible of being quoted" are therefore synonymous with the words "securities admitted on the quotation list." This interpretation has reconciled the authors.[a]

Hence, by "securities susceptible of being quoted," are meant securities which have been acknowledged by the stockbrokers as qualified to be placed on the official quotation list of the bourse.

Furthermore, we must also take into account that there are two categories of securities which can not be quoted—those against which there is a permanent prohibition, resulting from a statutory text, and those which lie under a temporary restriction by the Minister of Finance.

A decree of December 3, 1893, prohibits the official quotation of shares of foreign corporations, the par value of which is not on a plane with the par value of shares sanctioned by French law.

Now, the law of August 1, 1893, on stock companies, directs that the par value of shares shall be 100 francs minimum. For companies having a capital of less than 20,000 francs, the par value of shares must be 25 francs minimum.

Article 5 of the decree of February 6, 1880, empowers the Minister of Finance to prohibit the official quoting of a foreign security.

We shall now sum up the results obtained relative to this special point. Excepting securities against which there is an interdiction—either general, through the decree of December 3, 1893, or special, through the Minister of Finance—securities susceptible of being quoted are those

[a] T. 1, No. 1481.

which stockbrokers have decided to carry on their list, called the "*Cote Officielle*" (Official Quotation List).

Consequently, every time a syndical chamber of stockbrokers (*une chambre syndicale d'agents de change*) admits a security on its official quotation list, the chamber itself proclaims for the benefit of its members the exclusive right to negotiate the same.

(11) Stockbrokers have the privilege of carrying certain securities in a special place on their list, called the "non-official part" (*partie nonofficielle*). (Decree of Oct. 7, 1890, art. 20.) They can not carry, in that part, securities which they have been prohibited from quoting for the reasons mentioned above. They enter thereon securities comparatively rarely dealt in. It would be more correct to say that that portion of the quotation list is *not permanent.* The securities admitted on that part of the quotation list are subject to the privilege of the stockbrokers.[a]

(12) As the privilege of stockbrokers applies only to government and other securities susceptible of being quoted, all other securities may be freely negotiated by unattached intermediaries.[b] These are the *coulissiers* (curb brokers).

[a] *Trib. correctionnel de Lyon*, 12 mars, 1906. *Journal l'Information* of March 9, 1906.

[b] Regarding the right to use agents other than stockbrokers for unlisted securities or securities not susceptible of being listed, the following authorities may be referred to: *Trib. civ.: Seine*, 23 April, 1898 (*Journal le Droit*, of 6 Oct., 1898); *Paris*, 21 Oct., 1900 (*Pand. fr.*, 1901, 2.209); *Paris*, 24 Oct., 1900 (*Le Droit*, of 1 Dec., 1900); *Paris*, 19 Jan., 1901 (*Gazette du Palais*, 7 June, 1901); *Paris*, 28 March, 1901 (*Gaz. des Trib.* of 14 Sept., 1901); *Trib. corr. Marseille*, of 29 June, 1903 (*Rec. Marseille*, 1903, 1.328); *Cour de Paris*, 7 Feb., 1906 (*Cote de la Bourse et de la Banque*, 21 Sept., 1906).

But the stockbrokers can also negotiate securities which they have not the right to quote.[a] However, they have no privilege, as stated above.

(13) The penalty for transactions made in violation of the monopoly of the stockbrokers may be threefold: It is, first of all, the nullity of the transactions. It has been invariably imposed by the courts (notably, the decisions of the *Cour de cassation, Ch. crim.*, Jan. 19, 1860, and Feb. 21, 1868; *Chambre des requêtes*, Feb. 28, 1881; *Chambre civile*, Apr. 22 and June 29, 1885; *cassation*, Feb. 8, 1888 and 1892, Feb. 22, 1897).[b]

In spite of the weight which decisions of the court of cassation (*Cour de cassation*) carry, the nullity is not admitted by all theorists.

The nullity of transactions is very debatable. No passage of law pronounces the nullity. However, the decree of 27 Prairial, year X, is framed as follows: "In conformity with art. 7 of the law of 28 Ventôse, year IX, all negotiations made through unqualified intermediaries are declared void." *In conformity with article 7 of the law of 28 Ventôse, year IX* * * *. By referring to the law

[a] *Lyon*, 2 May, 1888 (*Droit Financier*, 1888, p. 264); *Trib. civ.: Seine*, 18 June, 1899 (*Journal la Loi*, of 31 July, 1899); *Lyon*, 27 March, 1902 (*Gazette Palais*, 1902, 1.715); *Lyon*, June 22, 1902 (*Dr. Fn.*, 1902, p. 422); *Trib. corr.: Seine*, 8 June, 1904, p. 342. (See also *Cote de la Bourse et de la Banque*, of 21 Sept., 1906.)

[b] Recueil de Sirey:

1860	1.481
1868	1.168
1881	1.289
1885	1.250
1885	1.273
1888	1.312
1892	1.294
1897	1.185

of Ventôse, not a word is found therein permitting one to say that operations are void.

M. A. Wahl [a] thinks that there may be doubt as to nullity. "We admit," he says, "that the natural sanction of a prohibitory law is the nullity of deeds infringing upon it, but only when no other penalty for its transgression exists; here, however, criminal actions are sufficient protection for the stockbrokers."

MM. Baudry-Lacantinerie and Wahl [b] are of the opinion, that it is untrue that every interdiction of public interest is sanctioned by nullity. "On the contrary, it is certain that, in general, nullity is not inflicted on an infraction to a monopoly." The case is different when a solemn contract is exacted in order to safeguard the free consent of the contracting parties—as, for instance, a donation or a marriage contract. But the monopoly of stockbrokers has been established only for *effecting* transactions; the consent of parties remains uncontrolled even when they apply to other agents than stockbrokers. The only right that is ignored is the privilege of the stockbrokers. Well, for this the *penal* restraint suffices. "No one has even thought of asserting that an auction sale of chattels, made without employing an auctioneer, would be void."

Are the former Council decrees of September 24, 1724 (art. 18), and November 26, 1781 (art. 13), to be antagonized? MM. Baudry-Lacantinerie and Wahl call attention to the fact that these decrees were repealed by the law of March 17, 1791, which abolished the monopoly of

[a] *Traité théorique et pratique des Titres au Porteur français et étrangers*, 1891, T. 2, 969.

[b] *Traité théorique et pratique de Droit Civil. Du Mandat.* No. 423.

the stockbrokers. Article 2 of the law of September 15, 1807, has, moreover, repealed "all ancient laws regarding commercial matters, on which the *Code de commerce* had been legislating." Besides, the law of 1886 on time-bargains has particularly repealed the council decrees of 1724, notwithstanding the previous repeal, because the administration of justice persisted in applying it. And that repeal applies not only to the provisions coming under the law of 1885, but to the entire decision. The authors, therefore, decide against nullity.

M. Daniel de Folleville [a] and M. Salzedo [b] claim that negotiation is not subject to nullity.

MM. Lyon-Caen and Renault [c] admit nullity. These authors maintain that the ancient laws, so far as an infringement upon the monopoly is concerned, may have survived, because article 2 of the law of September 15, 1807, repeals only the laws regarding matters on which the *Code de commerce* legislates. Well, the *Code de commerce* is not treating of infringements on the monopoly. Besides, MM. Lyon-Caen and Renault call attention to the fact that the reasoning they dispute, would lead to an inadmissible conclusion; that is to say, that there is no penalty for unwarrantable interference.

But it may be objected, it seems to us, that, the interference with the functions of stockbrokers being an offense—and, as such, punishable—it is not correct to state that interference is bereft of penalty. The law of 28 Ventôse, year IX, of which Chapter V of the *Code de commerce*

[a] *De la Possession des Titres au Porteur.* No. 295.
[b] *La Coulisse et la Jurisprudence*, p. 89.
[c] *Traité de Droit Commercial.* T. IV, note under No. 906.

is the successor, erects infraction into a misdemeanor. Hence the former provisions of 1724 and 1781 appear as having possibly been repealed by the law of September 15, 1807.

Therefore, it appears to us inadmissible that transactions effected through unqualified intermediaries should be void. Consequently, a customer could ratify transactions made without the coöperation of a stockbroker, and the engagements undertaken in regard of these transactions would be valid. But this solution is purely theoretical, since the administration of justice, as we stated, declares void all transactions made by intermediaries other than stockbrokers, when the negotiations refer to securities with regard to which the stockbrokers have reserved the privilege for themselves, by listing them on the official quotation list.

(14) We come to the second sanction of the monopoly of stockbrokers. Those who practise the profession of stockbrokers or meddle with the privilege reserved for these ministerial appointees, are liable to a fine in a police court, without prejudice, of course, to damages due to the stockbrokers.

This fine may be not more than one-sixth of the stockbroker's bond and not less than one-twelfth.

Article 8 of the law of 28 Ventôse, year IX, says:

"It is forbidden to all individuals other than those appointed by the Government, to fulfill the functions of stockbrokers and merchandise brokers, under penalty of a fine, which shall not exceed one-sixth of the stockbroker's bond, nor be less than one-twelfth.

"The fine shall be imposed by an inferior court by way of correction, enforceable by arrest, and the money shall be applied to the foundlings' fund."

What does the unwarrantable interference with the functions of stockbrokers consist of?

It consists of acts belonging to these functions; that is to say, of acts of mediation.

Hence, the acting as intermediary between purchasers and sellers, as a commission agent would do, is that which constitutes the offense.

This, moreover, was expressly stated in a decision of the *Cour de cassation*, rendered in a lawsuit brought against 26 *coulissiers* (curb brokers) in 1859. The decision says:

"Whereas acting as intermediary, in consideration of a commission or brokerage, between sellers and purchasers of government securities and other securities susceptible of being quoted, or, which is the same thing, bringing together sellers and purchasers, preparing and carrying out the formalities tending to the effecting of the purchases and sales, constitutes making negotiations in these government and other securities. * * *"[a]

We should mention, however, that a suit for unwarrantable interference was recently brought against some bankers for effecting *private* dealings—direct operations without intermediary.

These transactions are positively lawful. But it is self-understood that the stockbrokers ardently wish this were not the case.

[a] *Cour de cassation.* Jan. 19, 1860. Sirey, 1860. 1. 481. Also, *Chambre criminelle.* Feb. 21, 1868. Dalloz, 1881. 1. 9.

The decision of the First Correctional Chamber of the Seine Court (*Tribunal de la Seine*) on April 11, 1907, proclaimed that article 76 of the *Code de commerce* establishes the privilege of commission agents for the benefit of the stockbrokers; that freedom of trade is one of the essential principles of our modern law; that the general provisions governing sales, which form the matter of chapter 6, book 3, of the *Code civil*, contain no restricting disposition concerning the purchase and sale of securities; that *direct* transactions in securities quoted or not quoted are therefore lawful, without distinction as to whether the purchases and sales are for cash or for the account, fixed or on option, refer to securities *in specie* or *in genere*, or whether the seller is or is not the owner at the time of the contract.

However, the court established the fact that the bankers had made sales and purchases for clients-purchasers and clients-sellers at the same price. Therefore there was unwarrantable interference, since it was a case of agency. The prosecuted bankers were fined 25,000 francs.

When the case came before the *Cour d'appel* (court of appeals), the prosecuted bankers offered to prove that the inferior court had made no audit or verification, and that they had never matched sales with purchases and purchases with sales.

Were the proofs missing? The court of appeals, by its decision of April 9, 1908, sentenced the appellants without citing any case of agency. The decisions mainly rested on the fact that article 76 of the *Code de commerce* provides differently for transactions in government and other securities, on the one hand, and transactions in bills of exchange,

on the other, in making in the first case the mediation of a stockbroker always necessary, while not so in the second; that this difference of treatment results from the words "for account of others" inserted in article 76 concerning bills of exchange. Finally, according to the *Cour d'appel*, the *direct* transaction is one where the owner of the securities delivers them to the purchaser. But a sale in which the seller does not hold the securities, can not be *direct;* the mediation of a stockbroker is necessary for the sale.

These views have stirred up very violent criticisms.[a] An offense—that is, a punishable act—can not be construed, a monopoly can not be granted an excessive range, by forbidding *direct* transactions, and even punishing them—and this by reason of a difference in wording, which, moreover, is readily explained by the different way of negotiating securities of different character. (See above, No. 8.)

As to the prohibition forbidding the seller who is short in securities to sell by himself or to undertake to make deliveries without the agency of a stockbroker—it rests on no law and is purely arbitrary. After all, it is rather the mediation which constitutes the unwarranted interference.

The decisions of the *Cour d'appel* are, at the present time, before the *Cour de cassation.*

Is the fine imposed by the law of the year IX to be calculated on the security bond of the year IX or of the

[a] Vide Dalloz, 1908, 1–153, for the text of the decision, and a very important critical note by M. Percero, professor at the *Faculté de Droit* in the University of Dijon.

time when the offense was committed? The *Cour de cassation* in 1860 took as a basis the security bond at the time when the offense was perpetrated. This solution, supported by M. Boistel[a] and by M. Ruben de Couder, is violently criticised by others, like MM. Buchère, Mollot, Lyon-Caen and Renault.[b]

There are no extenuating circumstances when it comes to unwarrantable interference with the offices of stockbrokers.[c]

(15) Finally, we reach the third penalty imposed by the law upon infringements on the monopoly of stockbrokers, namely, the internal-revenue fine. The law of April 13, 1898 (art. 14), does not allow the payment of the tax on bourse transactions in securities mentioned on the official list of stockbrokers, to be made to the internal-revenue office by anyone except the stockbrokers. The result is that when a banker, who is bound to keep a register for the payment of the tax, enters thereon a transaction reserved for the stockbroker, and pays the amount of the tax to the administration, his acts constitute a violation of the internal-revenue law, punishable by a fine of 100 to 5,000 francs according to article 32 of the law of April 28, 1893.

The monopoly of stockbrokers is thus protected by a *triple wall*—(1) the nullity of transactions; (2) a fine in a police court; (3) an internal-revenue fine, the latter

[a] Boistel, *Droit Commercial*, p. 431.

[b] Buchère, *Traité des Opérations de Bourse*, No. 114. Mollot, *Bourse de Commerce*, No. 15. Lyon-Caen et Renault, *Traité de Droit Commercial*, T. IV, No. 904.

[c] *Cour de Paris*, Aug. 2, 1859. Sirey, 1860, 1. 481. Mollot, *Bourse de Commerce*, No. 16. Ruben de Couder, *Dictionnaire de Droit Commercial*, under "*Agent de Change*," No. 15.

imposed by administrative proceedings; that is, without trial.

According to the terms of the instructions No. 2956, issued by the general direction of the registry office, that provision does not refer to *direct* transactions.

But the administration of the registry office regards as direct transactions only those which are made for money, *securities against cash.* That solution is quite vulnerable.

(16) We shall close the inquiry into the extent of the stockbrokers' monopoly by a special consideration of metal transactions.

Article 76 of the *Code de commerce* divides the monopoly of such transactions between the merchandise brokers and the stockbrokers.

Now, in 1866 (see above, No. 3) the functions of merchandise brokers had left the range of monopoly. The trade is free. The result is that transactions in metals are free.

However, the stockbrokers alone have the right to certify the quotations.

BOOK IV.—*Historical and economic considerations.*

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FIRST DIVISION.—*The exchange market—Origin of public credit.*

(1) The history of the French financial market is closely connected with the history of commerce. From a more particular point of view, it is closely connected with the history of corporations, as well as with that of public credit.

Very little information can be found in the works of

the ancients, concerning the organization of commercial bourses (*bourses de commerce*) and the transactions there carried on. A kind of public market existed in Rome during the Consulship of Appius Claudius and Publius Servilius—that is to say, five hundred years before Christ. It was called the *Collegium mercatorum* (assembly of merchants).[a]

(2) Up till the Middle Ages, trading on the fairs affected only wares. The payments, however, which the sales necessitated involved transactions in exchange. To the fairs of Brie and Champagne, to the fairs of Lyon, Beaucaire, and Montpellier, there thronged a multitude of foreign traders, who sold wares, or bought wares in order to resell them in their own countries. There one would see Italian, German, Brabantine, Spanish, Portuguese, Barbarian, and even Egyptian traders—and in an unbroken line there stood "the money changers, whose tables glittered with gold and silver coins and with money from every country."[b]

[a] M. Edmond Guillard (*Les Banquiers athéniens et romains, trapézites et argentarii*, Paris 1875, Guillaumin) explains that some freed Greek slaves were the first ones at Rome to carry on the banking business and to practise money changing. He points out that the *argentarii* (bankers) were doing business at the beginning of the eleventh century before Christ. Independently of the offices which they had inside their establishments, they occupied branch offices (*tabernæ*) on the forum, where they could be found every day at a specified hour. It was the hour which the merchants, the manufacturers, and the capitalists of Rome also chose for assembling. Two centuries later, when the riches of the world became concentrated in Rome, the bustle which this kind of bourse presents is so great that the author compares the scene in the forum with that in *La rue Quincampoix* in Paris at the beginning of the eighteenth century.

Plautus (*Truculentus*, Act 1, scene 1) alludes to the crowd of merchants and bankers in the public square, among whom there mingled also the courtesans.

[b] See Amans Alexis Monteil, *Histoire des Français des Divers Etats*, vol. 1. The Epistles of Brother Jehan, Franciscan friar, to Brother André, friar of Toulouse, Epistle CXXIV: The fair of Montrichard.

In the commercial towns, operations of exchange as an established function—that is to say, outside of those which took place at the fairs—could, in fact, be executed only in a specified place. An Ordinance of King Louis VII, dated 1141, the original of which seems to be lost, had assigned the *Grand Pont* of Paris to the business of exchange, and made it an offense to practise it elsewhere. But the text of the ordinance of 1304, issued under Philip the Fair, and having almost the same purpose, has been preserved.[a] The specified place has since then borne the name *Pont-au-Change.*[b] As early as 1423 those who

[a] Philippus Deo gratia Francorum rex: notum facimus universis tam proesentibus quam futuris, quod nos ad ea, que pro bono communi utilius expedire videntur aciem considerationis dirigere, et propter hoc eorum qui facto cambii Parisiensis ingruunt statum et usum in melius ordinare studentes, duximus ordinandum. Quod cambium Parisiense erit et tenebitur super nostrum magnum pontem solummodo, a parte gravie, inter ecclesiam beati Leofredi et majorem archam, sive deffectum ipsius Pontis, pro ut Hactenus ante corruptionem pontis, ejusdem quondam lapidei extitit consuetum. Item quod nulli omnico liceat alibi, quam in loco illo cambiare, seu cambium tenere Parisus, aut infra banleucam, et quod si contra hujusmodi ordinationem nostram secus fieri contingat in posterum, et reperiri, pecunia seu resilla quoe alibi quam in loco ad hoc per nos ordinato, cambiare fuerit, vel ad cambiandum fuerit ordinata nobis cedet penitus in commissum. Item, quod si per aliquem habentem sedem seu locum in cambio praedicto commissum hujusmodo, delatum fuerit volumus, et ne frusta se in hoc laboresse doleat, ei concedilus, quod cum pecunia, seu res illa per gentes nostras fuerit tanquam comissa judicata nobisque applicata, quatuor partibus illius pro jure nostro retentis, ipse habeat quartam partem residuam sibi pro salario et labore suo, per gentes easdem de speciali gratia liberandum. Quod ut firmum permaneat in futurum, salvo in omnibus jure nostro et etiam alieno, presentibus litterio fecimus nostrum apponi sigillum. Actum Parisiensus anno domini millesmo trecentesimo quarto mense Februarii. (De Lauriére. *Ordonnances des Rois de France. Imprimerie Royale* 1723, *Tome* 1 *Page* 426).

[b] There were two *Grands Ponts*, one which had become the *Pont au Change*, the other, the *Pont Notre Dame.* The latter was in fact the *Pont des Planches du Mibray* (Bridge of Boards of Mibray). (See: de Ménorval. *Paris depuis ses origines jusqu'à nos jours, t.* 1, p. 241. A. Robida. *Paris A Travers L'Histoire*, p. 678.) The *Grand Pont*, built of wood ages ago, and several times burned or carried away by the streams, became loaded with houses around the eleventh century. The wheels of mills revolved beneath its arches. To the millers' houses were added goldsmith shops.

were engaged in money-changing carried on their business with permission of the King.

(3) It is at Bruges that the Bourse was for the first time called by that name.[a] In Holland bourses were established at a very early date. So far as this country is concerned, a long debt of gratitude is due to the Jews for these useful institutions; the persecutions, furthermore, which these courageous and untiring merchants experienced in Spain after the expulsion of the Moors, were the cause for their establishment in the Netherlands.

The Bourse of London, the establishment of which came after the foundation of the Bank of England, was likewise instituted by these bold merchants who came to Great Britain in the retinue of William of Nassau.

In France the first bourses to be legally instituted were established, first at Lyon, then at Toulouse, in July, 1549, under Henry II, then at Rouen, around 1565, and, later, at Bordeaux, in February, 1771, under Charles IX. The names by which these meeting places were known varied considerably. At Rouen the market place was called

Only one arch was used by passing boats. It was considered the property of the *Hanse des Marchands* (Merchants' League). This bridge, assigned to the use of the exchange merchants was also the bridge of the bird sellers (*Pont des Oiseliers*). The bird merchants had obtained the privilege of setting up there and of hanging their cages beneath the awnings of the exchange shops, provided they furnished birds which were to be released, as a manifestation of rejoicing, whenever a king or a queen passed by. This privilege was the cause of frequent quarrels between the exchange merchants and the bird merchants, and sometimes of truly mock-heroic brawls. Thus we see the origin not only of the name *Pont au Change* but also of *quai des Orfevres* (Goldsmiths' wharf) and of *rue des Lombards* (Pawnbrokers' street)—names of localities near by. As for the bird sellers, one may still see them, especially in these sections, plying their trade on the wharves of the Seine, even as late as the twentieth century.

[a] It seems that at Bruges the merchants would come together in the house of one of their number, known as *van der Burse*. According to others, the house where the meeting took place had three purses (*bourses*) carved on its gable (Lyon-Caen et Renault. *Traité de Droit Commercial*, t. IV, No. 859).

Convention.[a] At Lyon, at Antwerp, and in other towns the market place was called *change* (exchange), *estrade, loge, collège,* or *bourse.* A number of cities actually have each a *rue de la Loge* (market street), the name coming from the fact that the street led to the market place.

(4) The Bourse of Paris existed fully complete, as we have seen it, as early as in the reign of Philip the Fair (February, 1304); it was situated, as we have said, on *Pont au Change* (Exchange Bridge), called at that time the *Grand Pont* (Great Bridge), near the Grève, between the great arch and the church of *Saint-Leufroy.* At a later date, it was transferred to the large court of the *Palais de Justice,* beneath the *Galerie Dauphine* (Dauphin balcony), near the prison; thence it was moved to the famous street, *rue Quincampoix,* afterwards to the *Place Vendôme,* then to the *rue Louis-le-Grand,* and then to the *Hôtel de Soissons* (to-day the *Bourse de Commerce*), where it was situated when it was closed by the decree of the King's Council, October 25, 1720.

September 24, 1724, another decree of the King's Council legally instituted the Bourse and assigned to it, as an habitation, the *Hôtel de Nevers* (at present the *Bibliothèque Nationale*). It was situated there till June 27, 1793, the day of its closing. It was reëstablished on May 10, 1795, in the *Louvre* (on the ground floor beneath the *Galerie d'Apollon*—old apartments of Anne of Austria, and at present the *Musée des Antiques*). But during the interval (from 1793 to 1795) some rather heavy speculations in coin and assignats were carried through in the

[a] From the Latin *cum venire,* since it is used of persons assembling and coming together from various places.

Palais Royal, in the place called *le Perron;* that is to say, where *rue Vivienne* begins.

Closed on the 9th of September, 1795, the Bourse was opened again January 12, 1796, and established in *l'Eglise des Petits-Pères*. On October 7, 1807, it was transferred to the *Palais Royal* in the balcony called *de Virginie;* thence, on March 23, 1818, it was moved to the grounds of the convent of the *Filles Saint-Thomas*, on the site at present occupied by the *Chambre de Commerce* and by the buildings adjacent to the place occupied by the Bourse. The entrance was through *rue Feydeau*, facing *rue de Montmorency*.

A shed, floored with boards badly joined together, served as a meeting place for closing speculations which resulted from the financial contrivances of the Government of Louis XVIII. Finally, on November 6, 1826, the building at present known as the *Palais de la Bourse* was inaugurated. The edifice was enlarged in 1901, and the new premises were opened to the public in 1903.

(5) The economic history of our country shows to a marked degree the influence of the perpetual struggle of the guilds, whether it was against individuals who were trespassing on their privileges, or against other guilds who were in competition with them. This constant struggle was the inevitable effect of the organization of labor under the old régime. The organization of labor, in its turn, corresponded to the general conditions of the period. "Each province or even each canton produced almost all the things necessary for its own consumption. The fields furnished agricultural products, the producers of which themselves consumed the largest share; the

industries which supplied materials for clothing, housing, and the manufacture of arms and utensils, concentrated in towns and cities which in most cases were fortified. The natural hindrances of distance to which was added the lack of security, in thus restricting the markets, limited them to local producers only. For that reason there resulted a kind of organization of industry which is found in the oldest societies, in Egypt, in Chaldea, and in India, and which has existed up to modern times—the organization by guilds or by closed castes.

"The serfs or subjects of a seigniory, who had acquired the knowledge of a trade, obtained from their lords the right of plying that trade for their own benefit. Thrown together in the same neighborhood, in the same section, in the same street, where they were soon forced into competition, it did not take them long to learn that they would find it to their advantage to combine, in order to make themselves the masters of prices; for thus they might raise them to a point far above the one to which they were compelled by competition to reduce them."[a]

Such is, in short, the genesis of guilds.

(6) An edict of June, 1572 (under Charles IX), raises to office "all brokers (*courtiers*) who at the present time are carrying on the business of brokerage, whether it be in exchange and money; or in silks, woolens, linens, hides, and other kinds of merchandise; or in wines, corn, and all other kinds of grain; or in horses and all other cattle; provided that the brokers take out, in two months from the date of the edict, letters of commission (*lettres de provisions*)."

[a] G. de Molinari. *Questions économiques*, 1906, Guillaumin *éditeur*, p. 233 et 234.

This edict of 1572 shows us how the brokerage of exchange, practised simultaneously with the brokerage of merchandise, came to be recognized as a commission, that is to say, a public service. There were in France during this period commissions of justice, of finance, and of war; the practice of purchasing commissions began under Charles VIII, and was continued by his successors.

(7) Although the brokers had certain privileges, religious dissensions and wars were not over favorable to the practice of this profession, nor to the respect for the prerogatives granted to those who pursued it. Accordingly, in 1595, Henry IV renewed the edict of Charles IX.

The edict of April 15, 1595, prohibits any person, at the risk of corporal punishment, of being charged with forgery, and of being compelled to pay 1,500 livres, from performing the services of exchange broker (*agent de change*) or merchandise broker (*courtier*), before having taken letters of commission from the King. The edict ends thus:

"It is not to be understood, however, that anyone is compelled to employ the said brokers for the aforementioned transactions, if it does not seem best to him to do so."

Thus a principle was formulated which people expressed in the following saying: "*Ne prend courtier, qui ne veut*" (He who does not desire, needs no broker to hire).

The broker (*courtier*) was a man who ran (*courait*), who sought a seller for a purchaser, or a purchaser for a seller. When the first laws of their profession were being formulated the idea did not occur to anyone to compel sellers

or buyers, who were in a position to transact their own affairs, to have recourse to an unnecessary intermediary.

But it happens, that the question of commissions was of minor importance, as compared with the question of money. In other words, when the King created commissions, he made them yield revenue. This system was in vogue under Francis I, and was extended more and more under the reigns of his successors. We see what is, perhaps, its extreme development under Louis XIV.

Now, every corporation which pays, demands favors. Often when the King needs money, he alters the statutes of a corporation, takes away some rights formerly granted, in order to sell them again, or gives to it some new ones for ready cash. From that time on, it will be seen, the brokers benefit from extensions and redemptions of privilege, corresponding to profitable financial transactions on the part of the royal exchequer.

(8) A decree of the King's Council of May 17, 1598, explicitly subordinates to the exchequer the brokers of exchange, of money, of cloths, of silk, of woolens, of leather, and of other kinds of merchandise.

(9) It is in 1638 that, by a decree of the Council of the King, the name "*agents de change et de banque*" (commissioners of exchange and of banking) was given to the exchange brokers).

"This denomination, for which the Government managed to be well paid,[a] did not deprive them, however, of the right to sell merchandise. The *separation of duties was effected a good deal later.*[b]

[a] *Manuel des agents de change*, page 17, note 2.

[b] By the decree of the King's Council, October 25, 1720.

At that time the *agents de change* numbered thirty. An edict of February, 1645, created six new official brokers, in consideration of ready cash.

(10) Up to that time the exchange broker had dealt only in precious metals, foreign gold pieces, commercial bills, and merchandise. But in 1705 a decree of the King's Council made much of their prerogative as negotiators of certificates of loans made jointly by companies.

The edict of 1705, under Louis XIV, was issued in one of the most unfortunate periods in the history of French institutions. It is known that, after Colbert, the King's extravagances and the wars placed the exchequer in such a bad plight that 40,000 offices were sold from 1691 to 1709. This is a period notorious for the creation of the most ludicrous offices that can be imagined.

By this edict, the King, after having concluded that the present offices were rather cheap, suppressed all the offices of exchange brokers, bank brokers, and merchandise brokers that had been created all over the Kingdom. A financial reimbursement, to be sure, was promised them; but it was only a promise, and was never fulfilled. At the same time that the King decided upon the abolition, he announced the creation of 116 new offices of *agents de change*, 20 of which were for Paris and the others for the rest of France.

"We wish," says the decree, "that all certificates of loans contracted jointly by companies should be negotiated through the agency of the said stockbrokers and signed by one of them, who shall certify that the signatures are valid, in default of which we prohibit all judges from granting judgment against those who have signed them, in case, at maturity of said bills, payment is defaulted."

It is seen that the agency of the stockbrokers (*agents de change*) is obligatory in 1705.

It appears evident that the maxim, *Ne prend courtier qui ne veut*, has been broken. Negotiators are obliged to have recourse to a stockbroker.

This great favor granted to stockbrokers is explained by the financial scheme which the King is now hatching. The old stockbrokers will be reimbursed later, but in the meantime one must allure other brokers, or persuade the old ones to pay new sums of money.

The decree of 1705 said: "We wish that all certificates of loans made by companies * * * ." Those were the first obligations.

What in fact were these borrowing companies? It is important to know this, for the history of brokers and of the bourses is inseparable from the history of public and private credit.

SECOND DIVISION.—*General observations on public credit under the old régime.*

(11) Public credit must be considered under two denominations: *Public credit properly so called*, made up of loan securities of the Government or of artificial persons emanating from the Government, and the credit of *private institutions*, in the form of securities issued to the public by special companies.

The early kings obtained their ordinary subsidies through taxes, the enumeration of which, and the explanation of how they were levied and administered, would take us beyond the scope of our subject.

But the extraordinary resources of the early kings were obtained by processes which in no way show—nay, far

from it—the voluntary consent of those who supplied them. Public credit was brought into being by the extortion of the Prince. The King occasionally would ask for assistance from his faithful subjects, and whether one was willing or not, one certainly *had* to help the King. Now and then (under various pretexts), the King would resort to profitable confiscations, as for instance, to the recoinage of money, or even its debasement, to the sale of offices and of titles of nobility, and, as a last resort, to borrowing.

To the "system" of the sale of offices there was added, in a similar way, the loan-raising, which the authorities awarded in lump to the farmers of the revenue (*traitants*). This process was in vogue especially in the seventeenth century. The contractors became rich, but their profits were merely the consequence of the financial régime which resorted to their coöperation. Their risks were very great, for, from time to time, there were some awful and noisy law suits which would succeed in making them disgorge. Richelieu, in his political Testament, speaks of the restitutions which each court of justice effected to the advantage of the exchequer, as of a normal and regular resource.

The insecurity of the public credit, the serious troubles due to the distress of the royal exchequer, the empirical and often spoliating methods by which it was sought to remedy these troubles, contributed to the list of causes of the French Revolution. Moreover, they were not among the least potent.

(12) We shall pass over Dagobert and his finance minister, St. Eloi; we shall likewise pass over their successors, in order to make special mention of Philip the Fair, the maker of bad money.

Philip the Fair established an unusual tax of one denier on the sale of all goods. People called this tax the *Maltote*, the bad tax (from the Latin *male*, bad, and *tollere*, to tax). Jews, Lombards, and Templars suffered from his exactions. His methods have remained famous.[a] His successors imitated him, and from time to time they condemned their superintendents. Thus died Enguerrand de Marigny,[b] Gérard de la Guette, Pierre Rémy, Jean de Montaigu, Pierre des Essarts, in order that the King might lay hold of their fortunes which they acquired more or less regularly during the exercise of their public functions. King Charles VII, who was as much a maker of bad money as was Philip the Fair, imprisoned his Minister of Finance, Jacques Coeur[c] and Francois I had Superintendent Semblançay hanged.

[a] Vide, Ch. Gomel. *Les causes financières de la Révolution française*, Paris, 1842.

[b] Marigny, chamberlain and treasurer to Philip the Fair, had doubtless drawn up or inspired the splendid ordinance enfranchising the serfs, in which are found those beautiful words—a daring declaration of war to the lords: "Inasmuch as every human being is free by natural right, and inasmuch as this liberty is blotted out by abhorrent servitude, to such an extent that living men and women are treated as if dead, and at the end of their dreary and wretched lives can neither dispose of nor bequeath the goods which God has granted them during their life in this world, . . ." This was a challenge. He paid for it with his life. Accused of the most diverse crimes—of having embezzled the exchequer, of having stolen 30,000 livres from the pope's deniers, of having had his statue placed in the palace near those of the kings, and, to cap the climax, of being devoted to witchcraft—he was dragged from the dungeons of the Louvre to those of the Temple, then to those of Vincennes, and condemned, without having been given a hearing, and hanged at Montfaucon, on the gallows for thieves, on the Wednesday, Eve of Ascension, of 1315.

[c] Jacques Coeur, born at Bourges about 1400, was a prominent merchant. Minister of Finance to Charles VII, he was the King's creditor, which resulted in his downfall. Confined in Beaucaire, he succeeded in running away, and enlisted in the service of Pope Calixtus III. In the history of the city of Montpellier by Charles d'Aigrefeuille, Doctor of Theology, Canon in

We know the lines of Clement Marot:

"Lorsque[a] Maillard juge d'enfer, menait
A Montfaucon Semblançay l'âme rendre,
A votre avis, lequel des deux tenait
Meilleur maintien? Pour vous le faire entendre,
Maillard semblait homme que mort va prendre,
Et Semblançay fut si ferme vieillard
Que l'on cuidait partout qu'il menait pendre
A Montfaucon le Lieutenant Maillard."

the Cathedral of St. Pierre (Montpellier MDCCXXXVII, at the printing house of Jean Martel, royal printer), the following statements are found: "Opportunity was taken of every public office which he had held to accuse him of various frauds; it was said that as chancellor of the exchequer he had committed many embezzlements in Languedoc. It was claimed that, as director of the mint, he was guilty of having coined silver pieces known as *Gros de Jacques Coeur*, on which he made exorbitant profits, and, because he conducted a large business in the East, he was accused of having made transportations of gold and silver to places outside of the kingdom and of having furnished arms to the Turks in Alexandria. Here, also (so the statement goes), one of his galleys, called the *St. Denis*, took on board a Saracen child who wished to become a Christian; and the Patron, Michalet, a dyer, brought it to Montpellier, whence Jacques Coeur, from fear that his galleys would suffer as a consequence, had the child brought back to Turkey and returned to its master, where it again renounced its faith.

"Upon these accusations he was arrested at Taillebourg, transferred from there to Montils les Tours, where he was condemned to pay, as a fine, 100,000 crowns to the people whom he had oppressed, and 300,000 to the King; the penalty of death was changed to that of a public apology, and of imprisonment until the entire payment of the aforesaid sums would be made; after this he was to be banished from the kingdom, declared unfit to hold any public office, and all his property was to be confiscated.

"The years 1454 and 1455 contain nothing of note to our city of Montpellier; but in the following year, 1456, King Charles VII made an extraordinary gift to the merchants of this city, by granting them the lodge which Jacques Coeur had caused to be built there, at the cost of 1,869 livres 13 sous and 4 deniers. This piece of work is still perfect, as if it has just come out from the hand of the maker, without a single stone having been changed. Ornaments were not spared there; and the chemists who wrote so much about the wonders of the philosopher's stone took advantage of the puzzling figures which are to be seen there to persuade us that Jacques Coeur knew the secret of making gold."

There is still at Montpellier a street by the name of "*rue de la Loge.*"

[a] When Maillard, Judge of Hell, conducted Semblançay to Montfaucon to take his soul, which of the two, in your opinion, carried himself the bet-

Jacques Cœur and Semblançay promoted the sciences and deserve the gratitude of the poets, as later Fouquet deserved the gratitude of the good La Fontaine.[a]

(13) François I is considered to be the originator of our system of the public debt. It is to him that the creation of the perpetual rente dates back.[b]

These are the *rentes de l'Hôtel de Ville* (rentes of the town hall).

(14) Under François II, under Charles IX, and under Henry III, the religious wars, the dissipations of the court, and the squanderings of the courtesans almost each year necessitated the establishment of rentes,[c] the rate of which varied from the "denier twelve" to the "denier seventeen" (*du denier douze au denier dix-sept*).[d]

At the begining of the reign of Henry IV the debt was enormous. Agriculture and commerce had been ruined by the religious wars. Out of 150,000,000 livres in taxes, there hardly came in 30,000,000 livres, and after the wretched administration of Superintendent d'O, who died in 1594, the King asked for Sully's assistance; the debt which at the beginning of his reign had reached 337,620,252 livres, was reduced by more than 100,000,000 livres.

ter? So as to inform you, Maillard looked as one whom death is going to take, and Semblançay was so strong an old man that it was everywhere thought that he was going to hang at Montfaucon Lieutenant Maillard.

[a] See in the works of La Fontaine, *L'Élégie aux Nymphes de Vaux.*

[b] Edict of October 10, 1522.

[c] Léon Say. *Dictionnaire des Finances*, at the word "*Dette Publique*" by MM. E. de Bray and Alfred Neymarck.

[d] The expression "*denier douze*" signifies that for every twelve deniers borrowed, the borrower will give as interest one denier. A loan "*au denier douze*" is then a loan at 8.33 per cent. A loan "*au denier dix-sept*" is a loan at 5.883 per cent. A loan "*au denier vingt*" is a loan at 5 per cent.

Under Louis XIII, not only were the efforts of Richelieu inadequate to reduce the debt, but his struggles with foreign countries and the Protestants considerably increased it.[a]

(15) Under Louis XIV, up to the time of Colbert, public credit continued to be in a bad condition. After the disgrace of Fouquet, Colbert tried by several means to restore it, only a few of which will be mentioned.

Nicolas Fouquet, born 1605, after having bought the office of attorney-general at the *Parlement de Paris* (a higher court of justice), obtained the superintendence of the finances, thanks to Mazarin to whom he had remained faithful during the *Fronde*. The treasury was empty, and the duties of the superintendent became encumbered with those of the *trouveur d'argent* (money finder).[b] The loans were so onerous that an issue in 1658 of 400,000 livres of rentes, representing a loan of 7,200,000 livres, brought back an actual return of 1,200,000 livres, on which the cost of administration was 400,000 livres. If it is true that Fouquet was rich prior to his term of office, then it is certainly true that he became fabulously rich while in office.

Louis XIV paid Fouquet the remarkable honor of accepting an invitation to the *Château de Vaux*, a splendid palace, costing, according to Voltaire 18,000,000 livres. Innumerable invitations, says Voltaire, were sent out to all parts of France and Europe, and, on August 17, 1661, thousands of splendid carriages swarmed the road from Paris to Melun. The King, the Queen mother, Monsieur and Madame, and the entire court were not so much

[a] Léon Say. *Dictionnaire des Finances*, under the word "*Dette Publique.*"

[b] Lavisse, *Histoire de France*, t. 7, p. 80.

dazzled as shocked by this fabulous fête, which surpassed a hundredfold what the Sovereign himself could at that time have given. All the details contributed to this feeling: the comedy *Les Fâcheux*, improvised by Molière on a signal from the castle keeper, and presented in the park at the lower end of the alley of firs; the gardens, the waters, the ballet, the fireworks, the statues, the bronze figures, the furniture, the scenic effects, and the supper service of massive gold. The Queen mother could hardly restrain her son from having the Superintendent arrested on that very night, in the very place which, by itself, was evidence of his embezzlements.

Eighteen days had hardly elapsed, when, as soon as the King was on his way to Nantes in order there to inspect the States of Brittany, Fouquet was arrested, September 5, in coming out from the Council sitting, by d'Artagnan, captain of the musketeers. He was brought to the castle at Angers, then in turn to Amboise, Vincennes, Moret, and lastly to the Bastille, where he was immured June 18, 1663. Fouquet, in spite of his protests, was tried, not by the *Parlement de Paris*, but by a *special* court of justice (*Chambre de justice*), instituted by an edict of 1661; it assembled at the arsenal, and was composed of Sequier, the chancellor, de Lamoignon, the first president, and of twenty-two members chosen from every *Parlement* (higher court) in the kingdom. Nine voted in favor of death, and thirteen for exile and confiscation of property; the King, who felt much provoked, increased the penalty to life imprisonment. Sentence was pronounced December 20, 1664, and three days later the unfortunate Fouquet, atoning for his malversations "which had been nothing

more than pomp and generosity," departed for the fortress *de Pignerol*, where he arrived January 10, 1665, and where he was destined to die March 23, 1680, after fifteen years of strict captivity.[a]

(16) The *Chambre de justice* which had heard and condemned Fouquet, tried more than five hundred cases for embezzlement. They examined, going back to 1635, every loan transacted, and reduced the interest on each. Public credit suffered considerably as a consequence; but this consideration did not in the least restrain Colbert, who was thoroughly convinced that there was absolutely no occasion for borrowing. Frauds in connection with the taxes were mercilessly followed up. "Forty thousand treacherous nobles deposit at the treasury taxes which they have unlawfully evaded. The prisons are overflowing with farmers of the revenue, and the most guilty ones are being hanged; others have been freed only upon payment of a large ransom. This period is known under the name *Terreur de Colbert.*"[b]

In four years Colbert raised the net revenue from about 22,000,000 to almost 37,000,000 livres. But the lavishness of his master, the King, very soon put to naught the results of the wise financial policy of Colbert.

(17) It is, of course, known that after the death of Colbert (1688), the superintendency went over to Claude Le Peletier, who, in turn, was succeeded by Pontchartrain. The latter with great difficulty began some operations for credit, the most important of which were issues of rentes. But credit was dead. There was, so to speak,

[a] De Ménorval, *Paris depuis ses origines jusqu'à nos jours, 3e partie*, p. 339.
[b] J. M. Fachan, *Historique de la Rente française*, p. 32.

no public market for royal securities. They were reputed to be intransferable, and it was not considered legitimate that the security be negotiated for less than its face value. It was only some time later, at the beginning of the eighteenth century, that transactions in royal bonds began to take place on the bourse.

The decline of public credit gave rise to the utilization of special methods for stimulating it. In 1689, Pontchartrain resorted to an issue of tontine[a] life annuities, aggregating 1,400,000 livres. The operation succeeded and was successfully resorted to again in 1696.

Simultaneously with the issue of the tontines (from the name of their inventor, the Italian financier Tonti), issues of lotteries were brought into fashion in France by Italian financiers who had come over in the retinue of Catherine de Médicis. It is under Louis XIV that they appear in all kinds of forms—benefit lotteries, special and commercial lotteries, charity lotteries, government lotteries, etc.

(18) It was quite necessary, besides, to resort to sales of offices, and it is during the reign of Louis XIV that the most peculiar offices are created. "Sir," said Pontchartrain, "every time that Your Majesty creates an office God creates a fool to buy it." Every imaginable contrivance was utilized not only by Pontchartrain, but by his successors, de Chamillard and Desmarets. But during the latter part of the King's reign, royal loans benefited very much from the assistance of Samuel Bernard, financier, who was money lender, speculator, and intimate adviser of the King.

[a] The tontine principle consists in dividing the part of the benefits of the dying to the survivors, until the last one, at whose death the rente goes over to the State.

In the system of the organization of offices the increasing of salaries played a large part. The salaries were the stipend given by the King to the officer. This stipend was generally the interest on the money which had been paid for the office. The King allowed an increase in salary, provided an increase in money be given to him. It was not a disguised loan, but a forced one, for if the officer could not pay, some other person desirous of getting such an office could be found; then the old holder of the office would be reimbursed, unless both were allowed to continue in office together, in which event numerous difficulties had to be faced. From 1689 the practice of increasing salaries was much in vogue. The most important offices in the kingdom, those which required learning and skill, were made hereditary. The judiciary bodies, the *parlements*, the chamber of accounts, and all assistants were one way or another for sale at auction. The same was true also of municipal offices. The industrial and commercial professions were monopolized under the most peculiar conditions. Stackers of wood, testers of salted butter, inspectors of wigs, overseers of the roast meats, examiners of pigs' tongues, searchers of fresh butter, testers of cheese—all these were government officers. The King, "who is anxious that abundance should reign in his good town of Paris, has noticed that three or four individuals have so monopolized the oyster business that his subjects can get only as much as it seems proper to the oyster merchants to sell." And the King makes officers of caterers or sellers of oysters.

(19) It is now in place to pass to the public credit which was established by private companies with or without gov-

ernment aid. We shall see how the share and the bond assume their form.

The ancients seem to have been unacquainted with associations having their capital divided into shares. Greek authors very rarely referred to associations of more than three or four persons, and we can with reasonable certainty advance the opinion that shares never existed in Greece. As regards the Romans, the question is more difficult, for they had vast companies, notably the *societates vectigalium publicorum*, whose object was the exploitation of the farming of the tax. According to certain commentators, notably Orelli and Becker, these companies had been formed on the basis of shares. However, if some transferable parts were ever provided for in any of these companies, it is very probable that it was done only exceptionally and without modifying their general character.[a]

At Toulouse there was a mill, named *du Basacle*, which was given in the twelfth century by the prior of *la Daurade* to a company, the members of which were known as *pairiers*, whose parts, real transferable shares, did not entail the personal responsibility of the holders.

Some stock companies were in existence in Italy and Germany at quite a remote period; among them we find the Bank of St. George, at Genoa, which best displayed the general traits of the stock company. In 1407 it was reëstablished with a capital divided into 20,400 shares, according to information given by Scaccia. All were of equal value, carrying no personal responsibility and withholding from the members the privilege of negotia-

[a] See Ed. Guillard. *Les opérations de bourse*, p. 12.

tion. There was a general assembly and a board of supervision.

At the beginning of the seventeenth century all civilized nations of Europe are acquainted with the principle of share holding. In 1602 there is instituted in Holland the Netherland East-Indian Company. In England a similar company is established in 1613.

Under the old régime, maritime commerce was not conducted under the same conditions as it is conducted today. The reasons for it are obvious. It presented at that time too many perils and entailed too many expenses for individuals to be able to engage in it. Therefore licensed companies were organized upon which, in exchange for great advantages and an exclusive monopoly, quite onerous conditions were imposed.

"Henry IV, intending to follow the example of the Dutch in the Far East, authorized in 1603 a certain Gerard de Roy to form a company which, being granted a monopoly for fifteen years, should take in hand the trade with the East Indies. But the *Provinces unies* (United Territories) pointed out to him the harm this company would do their company of the East Indies (established March 20, 1602), and induced him to turn his endeavors to the West Indies. Henry IV later returned, but without success, to the project of the East-Indian Company. Amsterdam watched over its monopoly on spices." [a]

(20) Under Louis XIII Richelieu took this idea up again, which, to be sure, had never been abandoned. In 1625 there was founded the company *du Morbihan* for com-

[a] Ernest Lavisse. *Histoire de France depuis ses origines jusqu'à la Révolution*, T. VI–II, p. 82.

merce with New France, Moscow, Norway, Sweden, and Hamburg; the company *de la Nacelle de Saint-Pierre Fleurdelysée*, for negotiating and transacting business in all countries not hostile to the crown; the company *des Cent associés* (of one hundred partners), for colonizing New France (Canada); and some others—notably, two companies, for trading with the East Indies. Because of lack of funds all of these companies went to ruin.

The failure of these companies is the characteristic event in the colonial and commercial history of the reigns of Henry IV and Louis XIII. The companies in turn disappear, reappear, and vegetate. Outside of the religious world the colonies were not popular. The French at that time were a saving people, modest in their tastes, and leading a stay-at-home life, and preferring, as Montchrétien has already remarked in his *Traité d'Economie Politique* (1615), to live sparingly at home in any employment, than to seek fortunes in the colonies or in a foreign country.

(21) Under Louis XIV, thanks to the influence of Colbert, there were established (1) the West-Indian Company (*des Indes Occidentales*), started in 1664, which alone had the right to do business in our settlements in North America, the Antilles, Guiana, and Sénégal; it had its center in Le Havre; (2) the East-Indian Company (*des Indes Orientales*), started in 1664 [a] which had the monop-

[a] In the History of France by M. Ernest Lavisse, T. VI–I, pp. 238–239, are found interesting details about the formation of the East Indian Company. The beautiful and costly armorial emblems presented to the company on the day of the granting of its privilege, the grand advertising of the affair, and the great enthusiasm displayed, under the influence of Colbert, by the King, the Queen, the official world, judges and prominent civilians, both in subscribing themselves and in exhorting others to subscribe to the funds of the company, are described in a lively and fascinating style.

oly of commerce over the broad ocean from the Cape of Good Hope to the Strait of Magellan, thus including our settlements in Madagascar, in the Isles of France and of Bourbon, and in Hindostan; it had its center at Lorient; (3) the company *du Levant* (of the Levant), started in 1670, which contended with Venice, England, and Holland for the trade with Turkey, Asia-Minor, Syria, Egypt, and the Barbary States—it had its center at Marseille; and (4) the company *du Nord* (of the North), started in 1669, which traded, but without exclusive rights, with Holland, Northern Germany, Sweden, Denmark, Russia, and Poland; it had its center in Dunkirk.

The first two of these companies exercised complete royal authority over the colonies already founded or to be founded. They installed governors and judges, had the right of peace and war in their relationships with the natives, and flew the white colors on their ships. They enjoyed the sovereign authority similar to that which the English company in the Indies exercised over all Hindostan up until the mutiny of 1857.

The company *des Indes Occidentales* disappeared in 1674; from its remains were formed the companies *du Sénégal, de la Guinée, d'Acadie, du Canada, de la baie d'Hudson, de Saint-Domingue,* and especially the company *du Mississippi,* so famous during the period of the financial policies of Law. The company *du Nord* succumbed about 1672; the company *du Levant* in 1690; the company *des Indes Orientales* lingered on till 1718. From a part of its possessions was formed, twice (in 1700 and 1712), the company of China (*de la Chine*). When one of these companies dissolved, the colonies again became directly responsible

to the king, and once more commerce was free for individuals. In 1719 the company *des Indes* was reconstituted.

(22) John Law, by letters patent of May 2, 1716, procured the privilege of establishing a bank. It was called *Banque Générale*, and had a capital of 6,000,000 livres, divided into 1,200 shares of 5,000 livres each.

The 5,000 livres were to be paid in as follows: A fourth, 1,250 livres, in specie, and the remaining three-fourths in government notes. The government notes were the result of a loan of 250,000,000 livres at 4 per cent, previously issued by the Regent's Government; the loan had met with only middling success, and it was not long before the notes lost four-fifths of their value. This ability of the subscribers to pay for their shares in *government notes* explains the favor which Law gains in the eyes of the Regent. It did not take long before the *Banque Générale* was transformed into the *Banque Royale*.

Toward the end of August, 1717, a trader, Crozat, had procured a license to do business in Louisiana. Crozat granted the license to Law, who formed a company under the name *Compagnie d'Occident*, having a capital of 100,000,000 livres payable in government notes; various monopolies were conceded to this company, notably the monopoly of tobacco.

Soon after Minister d'Argenson had granted the lease of the imposts and duties to the Paris Brothers, who had formed a stock company with this lease as a basis, Law succeeded in having the *Banque Générale* declared *Banque Royale*, and in amalgamating all the trading companies

which existed at that time with the company *d'Occident*. The new company was called *Compagnie des Indes*.

This company, having become very wealthy, was instrumental in causing the withdrawal of the lease of the imposts and duties from the Paris Brothers and the transfer of the grant to itself. The series of policies which had been put into practice at this occasion was given the name of *Law's System*.

At the end of October, 1719, Law issued in securities "to bearer," 300,000 shares of the company *des Indes*, at the prevailing price of 5,000 livres each. (To Law, as originator, is due this form of security.) The proceeds of this issue were to be a billion and a half livres, which the company *des Indes* was supposed to loan to the Government at the rate of 3 per cent. The State owed him, then, for this principal an annual interest of 45,000,000 livres. On the other hand, however, Law owed the State the price of the lease of the duties and imposts, which amounted to 52,000,000.

The overtaxed emissions and the difficulties experienced by the company *des Indes* in maintaining the shares at a high price led to their fall. The bank met with ruin in repurchasing its own shares. The intrigues of the Court completed Law's doom. In May, 1720, the license was withdrawn from the bank, and Law ran away, completely ruined. He died in misery in Venice, 1729.

From 1716 to 1720 the *rue Quincampoix* had been the scene of one of the most whimsical frenzies of stock-jobbing which has ever taken hold of the people. The Court, the clergy, and the town gave themselves over to the most stupid speculations in securities of the com-

pany *des Indes*. Such and such a servant became master, and by habit rode behind his coach instead of getting inside. A widow by the name of La Caumont realized 70,000,000 in profits. The Duke of Bourbon realized enormous profits, which enabled him to rebuild the castle of Chantilly with a royal magnificence. This beautiful estate, which is at present occupied by the *Institut de France*, owes much of its splendor to the speculations let loose by John Law.

(23) After the breakdown of Law's policy, it was thought necessary in some way to reorganize the financial market, which had fallen into extreme disorder. The financial market had been, to a certain extent, shaping itself out into some sort of anarchy. An ordinance of March 22, 1720, which henceforth prohibits any assembling in the *rue Quincampoix*, states that "several dishonest dealers, taking advantage of the tumult and confusion which resulted from the meeting of unknown people, a few of whom were even without residence and social recognizance, have often embezzled and misappropriated the property of those who have had opportunity to deal with them; that a large number of servants and artisans have left their masters and their occupations, either themselves to carry on transactions or to help and act as broker for other people who did not dare to make their appearance." The Government goes on to consider that the stockbrokers (*agents. de change*) will assure the commonwealth against the return of the excesses which took place, forgetting that the cause of those excesses was other than a *certain* organization of the market, and that what is intended henceforth to mitigate speculation,

is the lack of nourishment, the complete breakdown of the system, its crisis. Another ordinance followed a few days later (March 28, 1720). All persons, with the exception of stockbrokers, are prohibited from assembling in any place or section whatsoever, and from keeping an office for the negotiation of paper; the penalty for violating this law is imprisonment or 3,000 livres fine. Speculators moved away and established themselves, instead, on *Place Louis-le-Grand*, known to-day as *Place Vendôme*. "On July 20, 1720, a royal ordinance orders that the transactions of shares of the company *des Indes* and the negotiation of bills of exchange or other negotiable certificates shall be carried on in the garden of the *Hôtel de Soissons*." The *Hôtel de Soissons*, we learn from the *Manuel des agents de change*, was situated almost exactly in the very place where the commercial bourse has recently been erected, in the *quartier des Halles*. The entrance is through the *rue des Deux-Ecus*. On August 30, 1720, a decree of the Council of State suppresses the sixty existing offices of stockbrokers created by the edicts of the month of August, 1708, and of November, 1714, and orders that there be established sixty new stockbrokers by special appointment. By article 9, all persons are prohibited from meddling with the duties of stockbrokers "on penalty of paying 3,000 livres fine, and even of imprisonment and greater punishments, if servants, apprentices, workmen, laborers, or vagabonds are the offending parties." A few days later, however, October 25, 1720, a decree of the Council of State orders also the shutting up of the bourse established in the *Hôtel de Soissons*, and no assemblage is allowed anywhere at all.

Finally, on September 24, 1724, another decree of the Council of State, in its first article, ordered that there be immediately established in the city of Paris a place called *la Bourse*, the principal entrance to which shall be through *rue Vivienne*.

THIRD DIVISION—The decrees of the Council from 1724 to 1788—The financial market on the eve of the Revolution.

(24) From 1724 to 1788 a series of decrees of the Council led to the modification of the régime of the Bourse.

In 1724, according to the phraseology of the decree of the Council of September 24, recourse to the agency of stockbrokers was strictly obligatory for the negotiation of royal bills and negotiable paper.

In January, 1723, there were created 60 offices of stockbrokers, and the report was spread that those who wished to take up the offices, that is to say, to declare themselves purchasers, would have to pay in a sum of money. To insure the buying out of the offices created, mention was made in the decree of 1724 of the privileges and advantages attached to the incumbents of these offices. But no purchasers appeared.

The decree of September 24, 1724, was then revoked.

The decree of the Council of State of February 26, 1726, ordered that the business of negotiable paper and other bills be made more free on the Bourse. Notwithstanding the provisions of the decree of September 24, 1724, "all merchants, traders, bankers and others who have been or shall be admitted to the Bourse," are, by the terms of the new decree, allowed to deal among themselves in shares of the company *des Indes*, and in other securities and negotiable paper, in the same manner as bills of

exchange, bills "to bearer," promissory notes, and merchandise are dealt in.

(25) In 1733 there is a sudden change. Purchasers of offices begin to appear.

The decree of 1726 is revoked, and in accordance with the decree of September 24, 1724, the King orders that transactions in shares of the company *des Indes* and in other securities and negotiable papers shall be made only through the agency of two stockbrokers.

(26) August 7, 1785, a new decree of the council of the King is issued:

ART. 3. "His Majesty wishes that, in accordance with the provisions of articles 17 and 18 of the decree of September 24, 1724, the negotiation of royal and other public securities should be considered to be valid only when stockbrokers have acted as intermediaries, and that such negotiations shall take place nowhere but on the Bourse, where the price of the securities will be quoted, according to the terms of the regulations, by two stockbrokers." Certain specified merchandise brokers are also allowed to go to the Bourse and to negotiate bills of exchange and bills "to bearer."

ART. 4. Stockbrokers must not list on the Bourse other than royal securities and the price of exchange.

ART. 5. They must not negotiate royal securities or other negotiable paper for their personal account, the penalty being removal and the payment of a fine of 3,000 livres.

ART. 7. Time bargains in royal or other securities without actual delivery, or even without the deposit of said securities at the very moment of the signature of the contract, are declared null and void.

ART. 8. This shall not be interpreted as prejudicing the right of merchants, dealers, bankers, and others admitted to the Bourse, to deal among themselves in bills-of-exchange notes "to bearer" or "to order," shares of the new company *des Indes*, and other commercial effects, without the mediation of stockbrokers.

(27) On March 19, 1786, a royal ordinance raises the number of stockbrokers to sixty, thus annulling the decree of December 22, 1733, which had diminished their number to forty.

(28) On July 14, 1787, a decree of the Council of State withdraws from the stockbrokers the monopoly of the negotiation of securities other than royal securities and of shares of *la Caisse d'Escompte* (a national discount bank established by Turgot in Paris in 1776).

(29) But on June 10, 1788, a decree of the Council of State renews the provisions of the decree of 1785 and ratifies a resolution of the stockbrokers, in which they declare that they will waive 270,000 livres in annual salaries attached to their offices.

It can be seen from the preceding that the Government would grant privileges to the stockbrokers which it would later withdraw in order to grant them again, and somewhat later once more to withdraw. Thus, in 1595, nobody is required to take a broker. In 1705 it is different. Individuals must resort to a stockbroker for the negotiation of loan certificates. But the prescription is not observed. A decree of 1724 reenforces it. It is repealed in 1726, but in 1733 a return to the principles of 1724 is made. In 1785 and 1786 the monopoly of stockbrokers once again gains more power. In 1787 it is diminished,

but in 1788 the stockbrokers giving up the interest on their security, the King agrees to revert to the principles laid down by the edicts of 1785 and 1786.

(30) Let us rapidly examine the condition of the transferable security on the eve of the Revolution.

There existed royal securities (*effets royaux*). They were loan certificates issued by the King, rente contracts, lottery tickets, and exchange notes.

In 1785 there existed a few stock companies. The company *des Indes* and the *Caisse d'Escompte* (Discount Bank) were the best known among them. Then came the company *des Eaux*, founded by the Périer brothers (ancestors of Casimir Périer) for the purpose of furnishing Parisians with water from the Seine. Mirabeau in his pamphlet (*Dénonciation de l'agiotage au roi 1788*) cites a number of companies, among which may be mentioned the Glass Company of Saint Gobain, the Rubber Company of Sénégal, and several fire-insurance stock companies. In 1789 the transferable securities on the Bourse numbered seventeen.

(31) Let us cast a glance on the condition of government finances on the eve of the Revolution.

When Louis XVI gave over to Calonne the management of the finances (November 3, 1783), there was a deficit of 80,000,000 in the ordinary budget, and there remained 580,000,000 of debts to be funded.[a] The new Controller-general first of all made the King sign an edict authorizing a loan of 100,000,000, which turned out to be a success. Soon after he undertook a loan of

[a] Charles Gomel, *Les causes financières de la Révolution française*, Paris, 1893; The last controllers-general, p. 80.

125,000,000. The administration of Louis XVI at that time had already borrowed almost 1,200,000,000 livres.[a]

The expenses increased so much that the deficit in 1785 was about 102,000,000, and the expenses of that financial year which remained unpaid were 72,000,000. The decline in royal securities frightened the Minister. Besides, the public took up the stocks of a Spanish bank, *la Banque de Saint Charles*, founded in 1782 by a French financier, Cabarrus. The extreme fondness which capitalists showed for it, displeased Calonne. He considered it bad that a foreign security should come to compete with our public capital, and since some loan securities issued by him in December of 1784 were about to take their rank among other securities, Calonne decided to prohibit by an edict the negotiation in France of foreign securities. Mirabeau, having received Calonne's permission and financial backing, published a virulent diatribe against the *Banque de Saint Charles* and its director, whom Mirabeau compared to Law, and whose private life he had the indelicacy to attack. The stocks fell from 750 livres to 400 livres, and speculation, which the Government switched over to royal securities, increased.

When the Government wishes people to speculate in rentes, the phenomenon has always been, and is now, the same. It intends to have rentes rise on the market. If they fall the Government does not hold itself responsible for the fall, but blames those who have suffered. Dealing in rentes for future delivery, which at that time was a common practice, was blamed for the actions of M. de Calonne.

[a] Charles Gomel, *Les causes financières de la Révolution française*, Paris, 1893, p. 165.

"The King is informed," says the preamble to the decree of the Council of August 7, 1785, "that for some time there has existed in the capital a kind of transaction or mutual agreement, as dangerous to sellers as to buyers, by which one party engages to furnish, on long terms, securities which he does not possess, and the other party consents to pay for them without having the necessary funds."

In the meantime the zeal of Calonne had taken him too far. He was forced by many complaints and the exigencies of the Exchequer to change his tactics. The decree of October 2, 1785, mitigated the severities of the preceding decree. By a decree of September 22, 1786, Calonne fixed the maximum time for bargains at two months. Calonne noticed that when certain securities rise the prices of rentes resist all causes for a decline which are likely to affect them.[a]

The example of England, he wrote later to the King, is sufficient proof that a wise government should be prepared, when the time requires it, to maintain by secret and indirect methods the price of the public stocks, and, in time of need, to make certain sacrifices to raise their price.[b] This operation cost the Exchequer 14,600,000 livres.[c]

[a] Léon Say: *Les Interventions du Trésor à la bourse depuis cent ans*, Annales *de l'Ecole des sciences politiques*. Année 1886, pp. 6 à 9.

[b] Ch. Gomel, loc. c., p. 254.

[c] It is at this period—1787—that the celebrated speculations of the Abbe d'Espagnac took place, and a little later Mirabeau published his virulent denunciation of stockjobbing. Calonne and Necker were not spared by the author. The pamphlet cost Mirabeau . . . a *lettre de cachet* ordering his arrest. But he was not arrested, Calonne having apprised him through the Abbé Perigord. D'Espagnac was brought before the revolutionary tribunal, April 3, 1794, condemned, and executed the same day on the *Place de la Révolution.*

FOURTH DIVISION.—The financial market during the Revolution.

(32) The Revolution found the stockbroker's profession, as well as a number of other professions, raised to the dignity of an office. The venality of offices and the bad speculations originated by the Government were among the most objectionable features of the old régime; the legislature endeavored to remedy these matters.[a]

"Nature makes no jumps," says an adage. What the naturalists and the anthropologists say of the phenomena of animal and vegetable life, is equally true of social phenomena. The French Revolution marks by a violent furrow the change in the political, economic, and social régime in France; but the work of the philosophers, the acts of the royal authority, its necessary concessions to the new ideas, had accomplished revolutionary phenomena even before certain facts, which history puts to the account of the Revolution, had been accomplished.

Turgot, the Minister of Louis XVI, of whom his colleague in the ministry, Lamoignon de Malesherbes, said "He has the head of Solon and the heart of l'Hospital," dared ask of the King to make the nobility subject to taxes. On January 5, 1776, Turgot presented to the Council the drafts of various edicts which were to suppress the corvée (statute labor) and the police regulations of Paris on grains, offices, wardenships, and masterships.[b]

All of these edicts met with an active opposition in the inner circles of the Council. Nevertheless, they were accepted. The edict involving the suppression of wardenships and masterships was passed March 2, 1776.

[a] Salzedo. *La Coulisse et la jurisprudence*, p. 29.
[b] Turgot, by L. Robineau.

But after the fall of Turgot, in May, 1776, the edicts, which it had cost him so much trouble to have passed, were again annulled.

The legislative assembly, however, again suppressed all offices, masterships, and wardenships. "Beginning with the coming April 1st," says article 2 of the law of March 10, 1791, "the offices of wig makers, barbers, bath keepers, bagnio keepers, as well as those of stockbrokers,—are all equally abolished." The legislative assembly placed all offices on a basis of freedom.

(33) We are compelled, although we have hardly arrived at the threshold of our study of the revolutionary period, to warn the reader against a widespread error regarding the effects of the freedom granted to the profession of stockbrokers.

An unprecedented outburst of stockjobbing took place at that time, and it is concluded that the fault lies in the freedom of commerce in transferable securities.[a]

Stockjobbing was caused, however, by the troubles arising from the foreign political situation, by the wars, and by domestic troubles—that is to say, riots, insurrections, the cessation of all production, the irregular payment of rentes in assignats, the excessive issue of assignats, the law of the maximum, etc.

(34) Stockjobbing is the result of political and financial disorder. When the sources of production have been stopped, and when the necessary commodities for consumption are paid for with a depreciating currency, there must necessarily be inaugurated a passion for speculation which will keep on increasing so long as the originating

[a] See Crépon, counsellor of the *Cour de cassation: De la Négociation d' effets publics et autres, p. 8.*

evil continues to grow. It is somewhat important to explain the physiology of this phenomenon.

A paper currency is circulated by a government. It is circulated in such quantities that it depreciates in the minds of those who receive it. With this money, too, it will be necessary to buy the most essential necessities, and the purchasers of these necessities will find themselves facing sellers.

If, by hypothesis, the seller of commodities is obliged to specify the price in a paper money whose depreciation he is fearing, how will he protect himself? By raising his price so that he will have much paper, with the result that this paper will guarantee him by its quantity against the consequent effects of depreciation.

Whence the first phenomenon with its double aspect: The rise in the price of commodities along with the fall of paper.

Now, if the seller whom we have seen receiving much paper, sees that it depreciates again while in his hands, it will not be long before he will notice that gold is the metal with which one pays abroad for purchased commodiites, and that he who holds gold, is safer than the holder of bills, which depreciate while in his hands. He will then make haste to change his paper for gold, and through this operation he will make two good bargains; he will protect himself against the future decline of his paper, and he will have in his possession some gold, which will continue to be in demand as long as the Government continues to issue paper. This gold he will be able to sell again against paper, or he will buy merchandise abroad for which he will settle in gold. As a holder of

merchandise, he will be in a position to begin again the same operation—to sell against paper; to buy gold with this paper; to buy foreign merchandise with this gold.

Whence the second phenomenon: The emigration of gold.

Thus there is manifested the law known as *Gresham's Law:* Bad money drives out good money.

Both phenomena took place during the Revolution. Assignats depreciated in proportion to the quantity issued; the price of all things rose. Gold rose. The bill of exchange on the foreign market, which represented gold, was in demand. Speculation was not the cause of these phenomena, but an inherent condition. It could not be otherwise. The abolition of the monopoly of stock-brokers was not the cause, and monopoly, if it had existed, would not have been able to prevent it. Besides, when it was reëstablished, the phenomenon of economic gravitation could not be prevented from asserting itself.

What follows will prove our assertion with perfect clearness.

(35) From the very first days of the Revolution the financial situation was a critical one. On June 17, 1787, the national assembly declared the creditors of the Government to be under the protection of the honor and loyalty of the French nation. Immediately after, Necker resorted to two loans, one on August 7, and the other on August 27—both of which were without success. He later resorted to a patriotic contribution of a fourth of the income of each citizen exceeding 400 livres, and of 2½ per cent of their silver plate, jewelry, and coined silver. It was not in this way that one could raise credit and

money. At this time the total debt was 208,027,242 francs. Besides, the debt represented only a small part of the needs of the Government.

(36) It was at this time that a decree of December 21, 1789, placed on sale some of the royal domains and a part of the ecclesiastical property in order to raise the sum of 400,000,000 francs. At the same time 400,000,000 assignats were created, which were to be redeemed by the proceeds from the sales. They paid an interest of 5 per cent.

Four months after the creation of these assignats, by order of the law of April 17, 1790, their interest was reduced to 3 per cent. According to the terms of this law, the assignats were to be received as specie in public and private cash offices.

The assignat, which had depreciated about 2 per cent almost immediately after its creation, was quoted in April at 94. In other words, 100 livres in paper were given for 94 livres in metallic money.

In August, 1790, an issue of 800,000,000 assignats was voted for by the assembly. These new assignats which were created as a result of the decree of September 29, 1790, bore no interest, and by a decree of October 10 the 3 per cent interest on the assignats of the first issue was cut off.

From this time on, it may be said, the assignat depreciated in the public estimation.

On October 1, 1791, the quantity of assignats in circulation was about 1,151,500,000 livres, and they lost 16 per cent of their value. Fourteen months later, January 1, 1793, the quantity of assignats in circulation rose to 2,825,906,618. They lost 50 per cent of their value.

Then came a series of decrees all tending to the depreciation of the assignat. A decree of April 11, 1793, imposed some severe penalties on any person who should buy or sell assignats for less than their nominal value in money, or should make any distinction in the prices of his merchandise according to whether payment would be made in paper or specie.

But the prices were to be stipulated in assignats, so that no law could prevent anyone from asking for a higher price for his merchandise.

When a government employs empirical processes with a view to sustain the public credit, it produces discredit.

Public trust resides in the citizen's state of mind. A state of mind can not be decreed, especially when it has to exercise itself upon the valuation of commodities. But governments, inspired by a misapprehension of the conditions of public credit, do not easily yield to evidence. The more discredit is created, the more do they entangle themselves in their own errors. When a government issues depreciating paper money, if it investigates the cause of the fall, it is necessary that it should without bias decide whether it is the fault of the stockjobbers or its own fault. But the Government never hesitates. For it the decline is caused by the stockjobbers. The Bourse is the only place where it originates.

(37) In the month of June, 1793, the assignat lost 64 per cent of its value. It was worth 36 per cent. A decree of June 27, 1793, ordered the closing of the Bourse.

During the time that the Bourse was closed, negotiations in coin and bills of exchange were transacted in the *Palais Royal*, or as it was now called *Palais Égalité*, in

the place known as *Le Perron.* The stockbrokers, removed in 1791, immediately organized into a free company, consisting of 80 members forming a syndicate, with the purpose of avoiding all conflict with the free, newly come stockbrokers; it seems that at that time there was not much occasion for complaint at the new condition of affairs.[a]

But, nevertheless, the scarcity of coin and the decline of assignats were attributed to the Bourse. The stockbrokers were arrested and their goods confiscated, and a decree of the 21st–24th of August, 1793, ordered that associations known under the name of *caisse d'escompte* (discount bank), life-insurance companies, and in general all those companies whose capital is made up of shares "to bearer," of negotiable bills, or of book registrations transferable at will, were abolished.

(38) These measures did not in any way cause the assignat to rise in value. In July, 1793, it again lost 13 per cent of the June price. In other words, it was worth only 23 per cent of its book value.

Frantic stockjobbing raged at that time; it was not the free market which generated it, but the causes which we have just examined, and the very absence of a market. Stockjobbing was in a feverish state which the slightest event could only increase.

(39) What could the Convention do? On August 1, 1793, and on May 10, 1794, decrees were passed imposing, as the case might be, heavy fines, imprisonment, or even death, on anyone who should in any way discriminate against the assignat.

[a] Eugène Léon. *Étude sur la Coulisse et ses opérations.* Paris, 1896. Page 31.

This measure did not prevent the sale of the most essential commodities at a raised price in assignats. A decree of September 4, 1793, extended to various necessities the decree of May 3, permitting the directories of the districts to fix a maximum price for grain and flour. But, besides that it was practically impossible to have this provision executed, a large number of commodities escaped the category of those specified.

(40) The Convention, having observed that the absence of the public market was detrimental to public credit, ordered its reopening on the 6 Floréal, year III, upon the request of Jean Bon-Saint-André; going from one excess to another, the Government which had before wished to suppress the Bourse, promulgated on August 30, 1795 (13 Fructidor, year III), a law making it an offense to sell gold and silver anywhere else than on the Bourse. It was declared an offense, also, by this same law, to sell, in any public place other than the Bourse, any kind of merchandise not shown at the place of the sale, and to sell goods and securities which one does not actually own when making the sale. The penalties for either of these offenses were imprisonment for two years, public exposure of the offender with an inscription on his breast of the word "*agioteur*" (stockjobber), and confiscation of his property for the benefit of the Republic.

It was at this time that the assignat lost 97.25 per cent of its value. It continued to decline and was worth no more than 2 per cent, having lost 98 per cent.

The convention closed the Bourse again, September 1, 1795 (25 Fructidor, year III), eight days after having reopened it; and the assignat still kept on declining. October, 1795, it was worth 1.36.

(41) A new law on the Bourse was promulgated October 20, 1795. It is the law of 28 Vendémiaire, year IV.

Since the time of the Legislative Assembly, the assignat had become the only credit and loan instrument of the Revolution.[a]

In 1792, the maker of a bill to bearer was made liable to the death penalty.[b]

In the year IV (October, 1795) the number of assignats in circulation represented 17,879,337,898 livres, and during the last three months of that period 5,541,194,037 livres had been issued.

During the year IV the manufacture of assignats rose to 70,000,000 daily. The less they were worth, the more of them was required; or, rather, the more of them that were made, the less they were worth.

Terrible famines afflicted the country and provoked bloody insurrections. England undertook to fight France by every way possible. She did not limit her hostilities to the expedition of Quiberon. Marquis de Puissage persuaded Pitt of the advantage of inundating the enemy's country with counterfeit assignats, to be fabricated by the best engravers of Holland "with such skill that Cambon himself would accept them."[c]

It is under these circumstances that the law on the police regulations of the Bourse, 28 Vendémiaire, year IV, was passed.

[a] Léon Say (*Dictionnaire des Finances*, under the words *Public Debt*, p. 1, 425. Charles Gomel, *Histoire financière de la Législation et de la Convention*. Paris, 1905, Guillaumin, editor. 2 vol. *Passim*).

[b] Albert Wahl (*Traité théorique et pratique des titres au porteur, Paris*, 1891; *Rousseau, édit.*, t. 1, No. 145).

[c] Michelet, *Histoire du XIX siècle. Directoire.* Chapter *Quiberon.*

Twenty-five stockbrokers were to be appointed, twenty of whom were to carry on banking and negotiate paper on the foreign market, and the remaining five were to deal in coin and bullion. No transaction was legally recognized or valid which had not been made through the agency of these twenty or of these five stockbrokers, wherever their respective agency was required.

Further, the law prohibits the stockbrokers from negotiating exchange bills on the foreign market for their own account, and from any trading whatsoever in exchange upon the foreign market for future delivery or on option, under penalty of being reputed stockjobbers and being punished as such, according to the law of 13 Fructidor, year III. (See No. 40.)

(42) These laws of year III and year IV show us tendencies opposite to those of 1791. After a period of absolute liberty, there followed a period of regulation, strict, rigid, and extremely menacing. The Bourse was made responsible for disturbances in the prices which were caused by the political and economic troubles of the period.

In the years III and IV the fundamental principles of public right counted for nothing. If the life and liberty of the citizens were not respected, would the principle of liberty in commerce be respected?

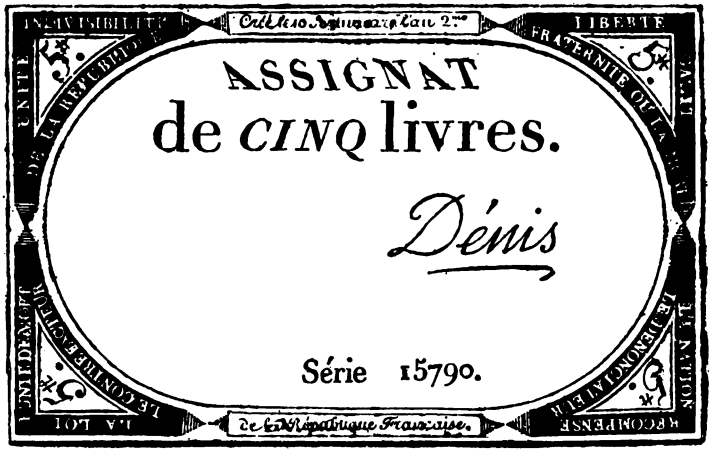
In this way are explained the Draconian measures of years III and IV. These laws were enforced with difficulty, and when circumstances permitted it, and peace was restored, a new legislation was ushered in more humane and more moderate.

(43) In August, 1796 (Thermidor, year IV), the quantity of assignats in circulation represented 45,578,810,040 livres. They fell to 0.36 per cent and even to nothing at all. A law of 28 Ventose, year IV (March 18, 1796), ordered their exchange for territorial drafts in the proportion of 30 for 1. Twenty-four billion assignats were exchanged for 800,000,000 drafts (or to be more exact, *promises* for drafts), to the payment of which were assigned the proceeds from the sale of 3,785,000,000 livres in territorial property. In spite of this change, the assignats continued to remain in circulation up to the time when the law of 22 Pluviôse, year IV (February 10, 1797), ordered the complete canceling of those which should not be presented for exchange on the following first Germinal.

The territorial drafts also were paper money and had a forced price from the day of their creation. On the very day of the issue, in spite of penal prescriptions which were intended to keep the price at par, the promises for drafts fell from 100 livres to 18 livres. The law of 29 Messidor (July 17, 1796) granted freedom to transactions and suppressed the forced price of the drafts which anyhow was of little account, as even the Government accepted their value only according to the current market prices. The surrender of the national property into the hands of the bearers raised the prices for awhile; but in the following December they again suffered a decisive relapse, before there had even been a chance to change the promises of drafts for real certificates. The law of 16 Pluviôse, year V (February 4, 1797), withdrew them from circulation.[a]

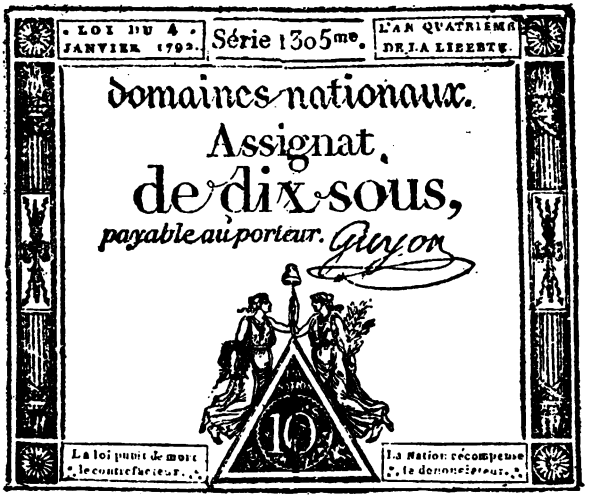
[a] J. M. Fachan. *Historique de la Rente française.*


LA LOI PUNIT DE MORT LE CONTREFACTEUR
LA NATION RECOMPENSE LE DENONCIATEUR
Loi du 4 Janvier 1792, l'an 4 de la Liberté
DOMAINES NATIONAUX
Assignat de
VINGT-CINQ SOLS.
Sid 246e
Servé
25 sols


INDIVISIBILITÉ
UNITÉ
LIBERTÉ
FRATERNITÉ OU LA MORT
LA LOI
LE CONTRE-FACTEUR
LA NATION
RECOMPENSE
ASSIGNAT
de CINQ livres.
Dénis
Série 15790.
de la République Française.


Loi du 23 Mai 1793.
Série 1904
L'An 2.me de la République.
Domaines nationaux.
Assignat
de cinquante sols,
payable au porteur.
Lauray
LA LOI PUNIT DE MORT LE CONTREFACTEUR.
LA NATION RÉCOMPENSE LE DENONCIATEUR.
50


Loi du 23 Mai 1793.
quinze sols.
L'An 2.me de la République.
Domaines nationaux.
Assignat
de quinze sols,
payable au porteur.
Série
15.
91.
LA LOI PUNIT DE MORT LE CONTREFACTEUR.
LA NATION RÉCOMPENSE LE DÉNONCIATEUR.


LOI DU 4 JANVIER 1792.
Série 1305me.
L'AN QUATRIEME DE LA LIBERTÉ.
Domaines nationaux.
Assignat
de dix sous,
payable au porteur.
10
La loi punit de mort le contrefacteur.
La Nation récompense le dénonciateur.

In order to get an idea of the rise of gold in comparison to assignats, let us give the following examples. In August, 1795, the gold louis was worth 1,020 livres in paper; in September, 1,200; in October, 3,000; in December, 5,100; in January and February, 1796, 8,600 livres.

The accompanying illustrations show the forms of assignats of different denominations.

(44) While the convention was proceeding with measures which belong to the field of political history and also with financial measures which we have just examined, the *Grand Livre de la Dette Publique* (Great Book of the public debt) was established. This document contains the totality of the government liabilities constituting the registered debt. The desire of Cambon was that all the government debts should be capable of being placed on the *Grand Livre*. This plan was incompatible with the wide range of liabilities which the State was led to contract. Therefore when one speaks to-day of the *Grand Livre* one merely means the book open to the registration of rentes.

Up to 28 Pluviôse, year IV (February 17, 1796), rentes were paid for in assignats at their *nominal value*. The holders of government rentes were reduced to beggary. In the year IV, like government employees, they received for a certain time a daily ration of bread and meat.

(45) The more the assignat depreciated, the heavier the debt became, since the Government received assignats at their nominal value and delivered them at their real value. The Treasury was placed in an impossible position, the only means of escape being nothing less than bankruptcy.

(46) The distress of the Treasury was such that the

government of the Directory went into bankruptcy, 9 Vendémiaire, year VI (September 30, 1797).

The law passed on that day ordered the inscription of rentes in the *Grand Livre* reduced by two-thirds. The third inscribed took the name of the "funded third" (*tiers consolidé*). The interest was fixed at "*denier vingt*" (the twentieth denier), that is to say, at 5 per cent. The other two-thirds were reimbursed in bonds "to bearer" (*bons au porteur*) called "*Dette publique mobiliére*" (Floated public debt). These securities had no value, and tumbled almost immediately to zero.

Subsequently, on Ventose 30, year IX (March 21, 1801), the Consular government passed a law entitling the bonds "to bearer" of the two-thirds to be converted into perpetual rentes, in the proportion of one-quarter per cent of the quantity brought for exchange. In this way a million of 5 per cent perpetual rentes were created. On the 22d of February, 1806, the collection and burning of the bonds of the two-thirds were ordered. Their liquidation was achieved by means of their being funded at 5 per cent (Loan of September 15, 1807).[a]

The financial operations of the year VI consisted of an issue of 40,216,000 francs of 5 per cent rentes. At the end of the eighteenth century the total of the French funded debt amounted, in round numbers, to 46,000,000 of rentes, representing a capital of 920,000,000 francs.[b]

Let us recall that these issues were registered. Rente securities "to bearer" exist only since the ordinance of April 29, 1831. France reëstablished her credit when she

[a] Vide Fachan: *Historique de la Rente française et des Valeurs du Trésor*, p. 132.

[b] Leon Say. *Dictionnaire des Finances*. Under "*Dette Publique*."

went into bankruptcy. This statement seems paradoxical, but, nevertheless, nothing can be more true.

(47) The great legislative work of the Consulate affected the Bourse as well as a number of other institutions, and we owe to the legislation of this period the fundamental law of 28 Ventose, year IX, in regard to commercial bourses. Three principal considerations seem to have actuated the legislator of the year IX: (1) To establish order on the bourses; (2) to reconcile the provisions necessary to assure public order, with a proper regard for the principle of freedom of trade; (3) to preserve the institution of stockbrokers from the risks of speculation and stockjobbing.

In order to insure the attainment of these ends the law requires that the stockbrokers be appointed for their public trust by the Government, which shall be guided in their choice by their moral character and their professional knowledge, and shall, besides, demand the pledging of a part of their fortune with the State as a guarantee of their good conduct and of proper expiation for their errors or failures. The law also emphasizes the principle of the freedom of commerce, expressly stating that nobody is obliged to have recourse to an intermediary, if he does not desire it.

(48) Further, the stockbrokers were subjected to several regulations with a view to prevent speculation and stockjobbing. Thus, they were obliged to keep a journal; their books were to be marked and signed by the President of the *Tribunal de commerce;* they could not trade nor carry on banking for their own account; no one who had been in bankruptcy was allowed to assume the duties of a stockbroker. The law also makes the stockbroker

responsible for the delivery of the securities sold and for the payment of the sums stipulated, even before either have been received by him from his clients—his security being appropriated for this pledge if need be. This responsibility was intended as a check upon transactions for future delivery. All these regulations were embodied in the decree of the 27 Prairial, year X.

(49) Transactions for future delivery, however, were not prohibited to private individuals. But still this kind of operations could not benefit from the security guaranteed by the law for transactions through an intermediary.

(50) At this time the scope of action for stockbrokers was very narrow. The official quotation list was wholly contained upon the recto of an octavo leaf, the largest part of which was given to gold and silver. It contained only ten kinds of securities, and no quotations for the account. It is only in 1844 that the official quotation list assumes its present form, with columns for cash (*du comptant*), for future delivery (*du terme*), for continuations (*reports*), and for options (*des prime*).

FIFTH DIVISION.—*The Nineteenth century.*

(51) The history of the French financial market during the whole of the nineteenth century, is filled with three groups of events of unequal importance.

1. *The operating of the Bourse itself.* The financial market has benefited by the progress of public credit, and, in its turn, has given further impulse to that progress.

2. *A special event.* The acknowledgment, in 1885, of the legality of "*marchés à terme*" (dealings for future delivery) displayed a tendency on the part of the French lawmaker

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to include transactions in securities within the scope of commercial transactions under common law.

3. *Another special event.* The struggle of the "*agents de change*" (stockbrokers) against the "*coulissiers*" (curb brokers)—that is to say, privilege against freedom, monopoly against competition—ended, after sundry vicissitudes, in the course of which the principle of upholding the curb (*Coulisse*) had prevailed, in a retrogressive movement in 1898—that is to say, in the strengthening of the stockbrokers' monopoly.

(52) The needs of the States impelled their governments to resort to credit. In order to do so, they had recourse to issues of securities—certificates of rentes or loans in sundry forms. To insure success for their operations, a wide market was required. And the market gave them the benefit which results from the existence of some sort of constant source of credit.

Any progress in the industrial line must necessarily have its origin either in an invention, in a mere improvement, or in a stroke of genius. But the inventor's genius itself is not sufficient. That social power "invention" needs another power which should, in some way, give it the necessary impulse to cause it to leave the purely scientific realm. That other power is *organization.* It includes the consolidating of capital, the determining of the rights of the owners, the directing, the financing, and the installing of machinery. It is easily understood, however, that organization, so far as it concerns an appeal to the forces of capital, requires liberal corporation laws and well equipped financial

markets, where transactions in securities are easy, quick, and safe.

When a country is conscious of the existence of such a market, the budding out of an enterprise, the shares of which have circulated on the Bourse, is apt to give rise to another enterprise, and thus is proven the law found in the natural order of things as well as in the sociological order, that the function creates the organ and the organ hastens the function.

Thus, the development of securities in France has been the expression of the development of public credit, especially of the credit of the French State, of the Departments, and of commerce; the expression of the parallel movement above referred to, which took place abroad and which manifested itself—especially during the second half of the nineteenth century—in a considerable influx of foreign securities into France; and, finally, the expression of the incorporation of numerous limited-liability companies in shares (*sociétés anonymes*) in important industries and in powerful commercial enterprises, rendered easier and easier by the more and more liberal corporation laws, the establishment of large credit institutions, and the development of dealings for future delivery.

(53) In 1900, during the World's Fair, an "International Congress of Securities" was held. We take pleasure in selecting the following remarks from the report on the organization of the Congress, presented by M. Alfred Neymarck:

"Since the beginning of the nineteenth century, and more particularly in the second half, there have been created and issued in Europe alone more than 400,000,000,000

of pieces of paper called certificates of rentes, shares and bonds, dividend shares, lottery bonds, etc., designated under the generic name of "*valeurs mobilières*" (transferable securities).

"These securities yield yearly 15,000,000,000 to 20,000,000,000 francs and are distributed among 15,000,000 to 20,000,000 holders of certificates, capitalists, and '*rentiers*' (private holders of government bonds). Now, the aggregate circulation of metallic currency and bank notes, all over the world, hardly reaches 5 per cent of the amount of 400,000,000,000—that is, 20,000,000,000. On December 31, 1899, the total amount of paper money, in all the European banks of issue, amounted in round numbers to 15,000,000,000 francs (to be exact, 14,992,000,000); the gold reserve kept on hand by these banks, amounted to 7,859,000,000, while the holdings of silver were 2,585,000,000—making a total of 10,444,000,000 francs. The aggregate of paper money and cash on hand amounted to 25,000,000,000 francs.

"From the discovery of America up to the present time, the total value at par of all the silver and gold which, during four hundred years, has been extracted from the bowels of the earth, may be estimated to be between 100,000,000,000 and 110,000,000,000—nearly 50,000,000,000 gold and almost 60,000,000,000 silver; while the aggregate of transferable securities created and circulated in Europe exceeds 400,000,000,000.

"This creating of negotiable instruments, and their distribution throughout all countries of the world, is surely one of the characteristics of modern times. * * *

"The creating and successive issuing of this mass of securities, always easy to purchase and to sell on the Bourse, have been the real cause of credit expansion. They were instrumental in accomplishing real marvels in France and abroad. As personal property increased, endeavors have been made to render exchanges easy, and to make transfers as little expensive as possible; transferable securities, owing to their denomination, their form, their mode of maturity for the payment of interest, their conditions for redemption, and the ease with which they are negotiated, have been brought within the reach of all purses, and have thus developed the spirit of saving.

"The consolidation of capital, under the form of stock companies, issuing shares and bonds that everybody can obtain, encompasses on all sides the civilized nations of the world.

"We may say, with Paul Leroy-Beaulieu, that now, owing to capital being accumulated in the shape of negotiable instruments, it is the stock company which takes us on a journey; often it provides us with food and lodging, sells us coal and light, makes up our clothing and even sells it to us; it procures news for us and inspires our newspapers. Further, it insures our lives and our dwellings; it feeds the unassuming Parisian in the *'Bouillons'* (cheap cook-shops) and feasts the stylish Parisian in the fashionable wine taverns.

"The distribution of all these securities has materially contributed to the formation of small inheritances. It has influenced the development of savings institutions, mutual benefit societies, pension funds, and insurance; it has thus rendered invaluable service in the public rôle

it has fulfilled. Thanks to it, these companies multiply and increase as the capitalization of their funds is made easier.

"It has also had another result. It has shown that there is no longer a plutocracy, but a veritable financial democracy; when these thousands of millions of certificates are minutely segregated, there are only found atoms of certificates of stocks and bonds, and atoms of income—so great is the number of capitalists and independent individuals who divide these securities and these incomes among themselves.

"At the beginning of the year 1800, the securities negotiable on the Paris Bourse included certificates of '*Rentes des tiers consolidés*' (French government stock reduced to one-third, September 30, 1797, see No. 46), certificates of the '*caisse des rentiers*' (office for the paying of rentes to independent individuals), shares of the *Banque de France*, and 3 per cent English consols—in all, about seven or eight kinds of securities, representing about 40,000,000 francs in rentes, and less than 200,000,000 francs in capital or other property. The first bourse quotation list dates from the second Vendémiaire, year IV (September, 1795). It gave the foreign exchange quotations: Amsterdam, Hamburg, Madrid, Cadiz, Genoa, Leghorn, Basle; then, under the pompous headings of 'Public Securities and Gold and Silver Bullion and Coins,' it gave the prices of Louis, Ecus, fine gold, silver bars, registered rentes, and bonds to bearer.

"Louis were quoted 1,165 livres; other coins, registered rentes, and bonds to bearer, were entered 'No quotation.'

"Now, on February 28, 1900, the official quotation list

contained: (1) not less than 442 stock companies, the shares and bonds of which, numbering 90,909,250, represented, at the market prices of that day, a capital of 42,000,000,000 francs; and (2) 203 loans of governments, departments, and cities, amounting to 56,000,000,000 francs.

"Adding 26,000,000,000 francs in French rentes to that amount, we find the capital of securities entered on the official quotation list on February 25, 1900, reaches almost 125,000,000,000 francs.

"On a corresponding date, viz, March 15, 1900, the quotations on the coulisse (*marché en banque*) were as follows according to the official bulletins of the *Syndicat des banquiers en valeurs à terme* (Syndicate of Bankers in Securities for the Account) and the *Syndicat des banquiers en valeurs au comptant* (Syndicate of Bankers in Securities for Cash), acting near the Paris Bourse: For future delivery, 4 kinds of government issues, 3 kinds of railroad securities, and 47 mining and sundry securities; for cash, 386 different kinds of securities, of which 38 were issues of different States, 57, of gold mines, 38, of other mines, 26, of railroad and transportation lines, and 35, of metal industries; the balance was in sundry securities, including 77 kinds of bonds, of which 22 were railroad bonds, and 22, gas and electricity bonds.

"It may be said that the total number of transferable securities quoted on the Paris Bourse and the sundry French markets, comes up to about 2,000 denominations, representing a capital not far from 135,000,000,000 francs. Of these 135,000,000,000, 80,000,000,000 to 85,000,000,000 francs belong to our French capitalists and '*rentiers*,'

and to insurance and sundry companies, yielding, on an average, an income of 4,000,000,000 to 5,000,000,000 francs.

"Such is, in a general way, the situation of transferable securities during the nineteenth century."

(54) We shall trace the history of the development of public credit, following the genesis of each important phenomenon, its growth and development, up to its attainment of its present state. This will in some way reflect also the plan of a history of the Bourse, of the transferable securities, and of the financial institutions of the nineteenth century. For this purpose we shall start with the public credit, properly so called—the public loans.

Public debts are ordinarily divided into four important categories:

1. *The perpetual debt.*—The borrower is not compelled to pay back the principal. He is liable only for the interest. But he has the privilege to pay the principal if he wishes to, although this is not required.

2. *The amortisable debt.*—The borrower agrees to pay, besides the interest, a part of the capital, until the entire principal is paid.

3. *The floating debt*, comprising time loans of relatively short duration necessitated by needs of the exchequer.

4. *The life debt*, consisting of rentes which expire on the death of the beneficiary, and originating in the majority of cases in pensions of retired veteran soldiers and servants in the civil service. These last two categories in the French public debt do not concern us, for we are investigating only that part of the debt which is represented by securities circulating on the Bourse. In this respect, the

last two categories play only a nominal part on the Bourse. It is different, however, in the case of the perpetual debt and the amortisable rente. These are the life substance of the *market for French rentes*. We shall scan their history briefly.

(55) The bankruptcy of two-thirds of the debt in the year VI of the Republic did not entirely solve the financial problem.

From the time of the creation of assignats, budgets ceased to be made. Every month the balance between the receipts and the expenses was filled by a previous deduction from the reserve of assignats. No bookkeeping records were kept since the convention. The disorder which needed to be straightened out was so great that not until 1801 was it found possible to make a budget. The *Cour des Comptes* (audit office) was instituted September 16, 1807. The Bank of France was reorganized in 1806; it was founded in 1800.[a] There was no public credit worth speaking of.

[a] The *Banque de France* was founded on the 24th Pluviôse, year VIII (February 13, 1800). At the beginning it was a free credit company with the right of issuing notes, formed by an association of persons high in the political and financial world of Paris. The capital consisted of 30,000,000 francs, divided into 30,000 shares of 1,000 francs each. The Amortization Office was authorized by a decree of the 28th Nivôse, year VIII, to subscribe for 5,000 shares. The total placing was slow, and ended in 1802 According to the terms of its original statutes, the bank had for its object: 1°, bank operations, such as discount, collections, advances, and deposits; 2°, the emission of "bearer" and "sight" notes. The issues were to be made in such a proportion that, with the cash reserve in its vaults and the maturity of the paper in its portfolios, the bank could in no case be exposed to the necessity of deferring the payment of its engagements. The law of the 24th Germinal, year XI (April 14, 1803), conferred upon its statutes a legal character, and made the bank the only association having the right of issuing notes. Its organization, functions, and powers were modified and completed several times by special laws. The capital of the *Banque de France* at present amounts to 182,000,000 francs. The number of its shareholders is 31,249.

(56) At the beginning of the nineteenth century the funded debt amounted to 50,000,000 francs of 5 per cent rentes, representing a nominal capital of a billion francs.

On April 1, 1814, the perpetual debt was 63,307,637 francs of rentes.

On July 31, 1830, the amount of the perpetual debt was about 202,381,180 francs of rentes.

At the time of the revolution of 1848, the perpetual debt was about 244,287,266 francs of rentes.

On December 31, 1851, the perpetual debt amounted to 242,774,478 francs of rentes; this means that during the second Republic there was a decrease of 2,000,000 francs of rentes, due to an excess of abrogations over issues.

During the second Empire, the sum total of the perpetual debt rose to 402,977,516 francs (December 31, 1870).

Although the financial operations of the Third Republic have been enormous—having had to liquidate the debts of the Second Empire and the charges of the war of 1871, amounting to 9,000,000,000 francs—yet the total increase of the funded debt up to the present, owing to successfully conducted extinctions, amounts only to 254,695,999 francs.

On January 1, 1909, the amount of the perpetual debt was 657,673,515 francs of rentes, represented uniquely by 3 per cent perpetual rente securities. The amortisable debt amounted to 107,629,800 francs.

(57) One of the phenomena which are conducive to the establishment of public credit is the democratization of the transferable security. The more easily accessible the

loans, which were introduced in 1878, and have been negotiated on the Bourse through the mediation of the syndicate of stockbrokers (*syndicat des agents de change*) by the general paying treasurers of the Departments.

(59) There are other debts, besides those of the State, which have the character of public debts; these are debts of departments and municipalities, which give rise to a large circulation of securities upon the market. The departmental debts, directly concluded and, consequently, not including engagements for guaranteeing profits to private companies, the annual charges on which amount to 50,000,000 francs, are valued at 700,000,000 francs. The communal debts are more important than those of the departments. They rise approximately to a figure slightly above 4,095,000,000, of which 2,545,000,000 fall to the account of the city of Paris alone. On December 31, 1869, there were on the official quotation list in Paris 14 different stocks of departmental and municipal loans, representing a capital of 808,600,000 francs. Their number at present (1909) is 58, and they represent 2,300,000,000. The obligations of the city of Paris form the majority of municipal bonds figuring on the list, and belong to different loans of the period between 1860 and 1906. All other loans of this and earlier periods have been amortised. The number of certificates in circulation is 4,618,205, representing a capital of 2,090,107,200 francs. The majority of these are lottery bonds.

(60) The scope of this publication allows us only to make brief mention of the loans of colonies and protectorates.

They began with that of Tunis in 1892. Since then, there were loans issued by Algeria, Guadeloupe, Indo-China, Madagascar, Martinique, Occidental Africa, the Reunion, the protectorate of Annam and Tonkin, and Tunis. The number of bonds at present in circulation rises to 2,286,573, representing a capital of 816,166,500 francs.

(61) Brief mention should be made also of foreign credit, which France has favored to a considerable degree, although its development is only recent. Till 1823 there existed a prohibition against the dealing of stockholders in any other but royal bonds. All dealings in foreign securities in Paris was done only by curb brokers. In December, 1830, there were only 11 different stocks entered upon the official list.[a]

Under the Second Empire there were already many important foreign issues figuring on the quotation list. Turkey, Austria, Spain, Hungary, Egypt, Russia, and Italy were among the borrowing governments of that period whose securities prevailed on the Paris market.

The emissions of public funds of foreign countries became still more numerous during the period between 1870 and the present time. Egypt, Hungary, Russia, and even Japan and England, are among those that issued heavy loans, and whose bonds are among the securities prevailing on the Paris Bourse.

In a communication to the International Congress of Transferable Securities, named *Les Valeurs Mobilières en France*, M. Thery claims that it is impossible to give a precise estimate of the number and capital of foreign securities held by French capitalists. He ascribes the

[a] Claudio Jannet, *Capital, spéculation et finances au XIX^e siècle*, page 522.

reason to the fact that these same foreign securities are traded in on many international great markets of Europe, besides Paris and their original countries; that these securities are in constant movement on account of their offering of great inducements of arbitrage, and because of real demands and offers of French capital—and thus constantly escape every control.

But yet an estimate has been tried. Léon Say puts the capital of the foreign securities at between 10,000,000,000 and 12,000,000,000 francs. Paul Leroy Beaulieu puts it at between 12,000,000,000 and 15,000,000,000. Neymarck estimates it at 20,000,000,000. However, it is of little importance to know the exact proportion of the French and foreign funds prevailing on the French market, provided the institutions of the country are such as to give free scope to indigenous demands, and provided that these demands are satisfied.

(62) The first appearance of shares of insurance companies on the official quotation list of the stockbrokers in Paris dates from the time of the Restoration. The first insurance company was authorized by an ordinance of April 22, 1818, under the name of *Compagnie royale d'assurances maritimes*, which has since become the *Compagnie d'assurances générales maritimes*. Soon after, in 1819, there were formed by special ordinances one general fire insurance and one general life insurance company. In 1830 we find already 7 insurance companies on the official quotation list.

The insurance companies have followed during the nineteenth century the general progress in insurance and in the laws upon joint stock companies. Article 66 of the

law of the 24th of July, 1867, exempts insurance companies (excepting mutual and fixed-premium companies) from government supervision or authorization, and leaves them free to form themselves, subject only to the general regulations of public administration.

According to a memoir by M. le Chartier, submitted to the International Congress of Transferable Securities of 1900, out of 327 fire insurance, life insurance, accident insurance, and maritime insurance companies that have been founded in France during the nineteenth century, 209 ceased operations, and the capital lost is estimated at 692,825,000 francs, while the 118 companies existing in 1900 had a lump capital of 485,840,000 francs. This does not include the reserve funds.

According to a report of M. Neymarck to the International Institute of Statistics, at the meeting of 1907, the insurance values figuring on the official list on December 31, 1906, were represented by 402,930 certificates and by a nominal capital of 4,643,618,100 francs. The Coulisse had at the beginning of 1909 seven different insurance stocks, representing a nominal capital of 54,000,000 francs.

(63) The establishment of railroads in France, as in other countries, was the signal for a prodigious economic movement. The money market was the crucible in which was molded the capital permitting of the formation of railroad companies.

In 1832, when the advantage of railroad concessions was first understood, many railroad companies were formed. After a law had been passed in 1842, permitting temporary concessions and establishing the eight great trunk lines whose construction was very important for the whole

country, there ensued a veritable fever of railroad building and speculation. In six years 6,000 kilometers of railroad tracks were granted in concessions, of which more than 1,250 had been constructed. Speculation increased so much that a law was passed on July 15, 1845, prohibiting the sale of promises for railroad shares.

(64) The following revolutionary period of 1848 was a difficult one for all kinds of enterprises. Receipts fell off. The Government had to intervene and buy back the Paris-Lyon road; many companies went into receivers' hands. A panic ensued when the population had demolished a great number of railroad stations and bridges, and doubts arose as to the intentions of the Provisional Government with regard to the rentes of railroad companies. A great tumble in the values of railroad stocks was the result.

(65) Under the Second Empire, prompted by uniform concessions for a period of ninety-nine years, the then existing 27 lines, with concessions of different duration, were united into six principal great regional trunk lines. In 1859 the existing concessions contained 14,756 kilometers, and the roads in exploitation covered 9,074 kilometers. But, following a commercial panic which raged in 1857, the public was frightened by the large funds engaged. The Government decided to fund the indebtedness of the companies, and the agreements of 1859 were concluded.

By those agreements the Government guaranteed 4 per cent interest upon each of the less productive new systems, and a minimum of revenue upon each of the old systems of railroads. Besides, in virtue of new traffic procured for the old systems by the creation of the new ones, a part of

the receipts of the old lines was reserved for the new systems.

The credit of the companies rose rapidly, and they could easily place their bonds at advantageous rates. From 1859 to 1870, the length of exploited lines was increased by 8,365 kilometers, and the ceded lines passed from 16,441 to 23,440 kilometers.

After the crisis of 1870 the national assembly, in spite of the difficulties in which the country found itself, continued the work of construction, and from 1870 to 1875 granted not less than 4,680 kilometers of railroad lines. Then comes the construction of the government railroad system, as a consequence to the taking over of the secondary companies that failed. Then also comes the Freycinet plan of the creation of 3 per cent amortisable rentes. The plan was too vast for accomplishment, since it was evident that the Government was unable to build 10,000 kilometers in the presence of the lines that had been given rank by the law of July 17, 1875.

(66) Then came the famous agreements of 1883, so much decried, which, however, permitted the railroad industry to begin its ascent to the heights on which it stands to-day.

By these agreements, the six great companies were declared the grantees of 12,687 kilometers of railroad tracks—under exploitation, in construction, and to be constructed. The distinctions between old and new roads were suppressed. The receipts and expenses were kept in one account. From the receipts the companies had previously to deduct the sum necessary to assure the interest on their loans and the payment of dividends guaranteed by the Government to their shareholders.

(67) By the side of the great systems, there were formed a large number of systems of local interest, whose aim was to connect localities of secondary importance with one another or with the great lines. The development of these secondary lines was promoted first by the law of 1665 which granted state, departmental, and municipal subsidies; but to a much greater extent by the law of 1880 and the supplementary decree of 1881, which replaced the *subsidies*, that promoted speculation [a] without development, by mere *guaranties* of profits in case of actual exploitation of the roads in question.

At the same time in the interior of the cities there developed the use of mechanical traction, replacing animal traction. Paris set the example, and the formation of its system of tramways called "*de pénétration*" gave birth to a great number of large companies. These traction companies extend their activity also to the province, and the creation of affiliations and trusts, toward the end of the nineteenth century, was the occasion of a considerable issue of paper.

At present the official quotation list mentions not less than 60 secondary railroad or tramway companies for France and its colonies.

(68) The French financial market was to a very great degree concerned with foreign railroads. In 1837 there appeared for the first time on the Coulisse, and later on the Parquet, shares of a foreign railroad company. The political and financial order of events, as well as the condition of affairs on the Bourse at that time, did not permit a very great development in transactions in securities of

[a] See an article by M. Gomel in the *Dictionnaire d'Economie Politique* of Léon Say.

foreign railroads. But the Rothschild firm was interested in the first railroad companies for the development of the north Italian and south Austrian regions, which later formed the *Compagnie des Chemins de fer Lombards*, whose shares appeared on the quotation list in 1856. From now on, under the impulsion of the newly formed *Crédit Mobilier*, the financial market becomes more and more interested in a large number of foreign railroads. In 1858 a decree of May 22 announced the conditions which foreign railroad companies have to fulfill, in order to become admissible to the official quotation list of the stockbrokers.

(69) According to a report by M. Alfred Neymarck to the International Institute of Statistics (session 1907), the securities of railroads and street railways, figuring upon the official quotation list on December 31, 1906, represented a capital of 20,167,834,000 francs, in 5,843,608 shares. There were in all 71 companies, 32 of which were for foreign railroads, and represented a capital of 7,541,329,600 francs.

(70) We have dwelt on the creation and development of railroads, because they have marked in a very strong way the industrial progress of France and the development of credit in its relations to the Bourse. Besides, also, numerous companies were formed, from 1820 to 1852, for the exploitation of iron mills and various manufactories, of mines, and of transportation. The *Crédit Foncier* and the *Crédit Mobilier* were among these associations. Both of these companies, in cooperation with many other contemporary ones, considerably developed the transferable securities. From 1830 to 1838 many limited-liability companies in shares (*sociétés anonymes*) were formed by

a sort of degeneration of the "*commandite*" form of company (*société en commandite*), in which the managers, or active partners, were under unlimited liability.[a] The securities of the companies formed on this new basis appeared on the Bourse in great numbers since 1832.[b]

The most diverse industrial enterprises were thrown into this form of company. The promoters of doubtful enterprises put at their head men of straw, in order to avoid personal responsibility. The shares of certain enterprises reached fantastic prices (over tenfold their par value), owing to exaggerated expectations of shareholders. Stock-jobbing was rife on the Bourse. But most of these insecure undertakings were swept away by the crisis of 1838.

The formation of lottery combinations also belongs to that period.

(71) We come now to the era of the great credit associations.

The *Comptoir d'Escompte* (national discount bank) dates from the period of turmoil of 1848. Its powers

[a] The French law at present recognizes four forms of commercial companies: 1. The partnership (*la société en nom collectif*), in which the partners are responsible for debts contracted by the company to the whole extent of their personal estate. 2. The "commandite" form of company (*la société en commandite*), in which one or several members are responsible with the whole of their estates, while several others are responsible only up to a sum which they announce in the contract. The second category of partners take the name *bailleurs de fonds*, or *commanditaires* (sleeping or silent partners). 3. The "commandite" in shares (*commandite par actions*), in which the commandite members are shareholders in the ordinary commercial sense, involving liability only to the amount of their shares. The member or members responsible with all their estates are called *gérants* (managers, directors). 4. The limited-liability company in shares, in which all the members are only shareholders, liable to the amount of their shares, and which are managed by one or several administrators by proxy (*mandataires des actionnaires*).

[b] M. Jannet. *Le Capital, la Spéculation et la Finance*, page 510.

spread to such an extent that at the present time it is one of those establishments which are known as the *great financial magazines*, and the most conspicuous of which are the *Crédit Lyonnais*, the *Société Generale*, and the *Crédit Industrial et Commercial*, all of which were founded during the Second Empire. The principle which governed the founding of the *Comptoir d'Escompte* goes back to a period previous to 1848.

After a commercial panic in 1827–28 an attempt was made to found a discount bank in Paris, intended to serve as an intermediary between the public and the Bank of France. Large sums of money were advanced to it by the treasury and the Bank of France; it was thus able to discount bills of two signatures. But this institution failed in April, 1832, practically before it had time to work.

The deplorable condition of the financial market in 1848, and the many financial catastrophes caused by the revolutionary turmoil, induced the Provisional Government to establish a number of discount banks all over France, under the general name of *Dotation du petit commerce*. The basis and the main statutory provisions governing them all were as follows: Private persons, the State, and municipalities were called upon to furnish each one-third of the capital of the banks. The third coming from private persons was to be fully paid in and represented by shares; the other two-thirds were to be represented by treasury bonds and municipal obligations deposited in the treasury of the bank. Besides this capital, the banks received from the State at the time of their formation a subventitious loan in specie, at the interest of 4 per cent for the State's benefit. Almost all these loans had been reimbursed dur-

ing the first three years. The chief purpose of all these banks was discount; they could, however, add to this all operations tending to facilitate the circulation of notes, such as the collection of bills of correspondents, the collection of debts for departments or foreign states, the opening of accounts, etc. The city of Paris, naturally, was the first to be endowed with this institution; a decree of March 7 created the *Comptoir National d'Escompte de Paris*. Many towns soon followed suit and gave birth to similar institutions. Their number was 67, and they represented a capital of 130,449,500 francs in shares. The Paris institution was reconstituted under the old name, after liquidation in 1889, owing to mismanagement of its director-general, M. Denfert-Rochereau.

The original capital of 40,000,000 francs, divided into 80,000 shares of 50 francs, was now increased to 80,000,000 francs. Later it was successively reduced to 75,000,000, increased to 100,000,000 (1895), and to 150,000,000 (1900). Only recently (1909) it was increased to 200,000,000.

(72) We come now to the founding of the *Crédit Foncier* and the *Crédit Mobilier*. Both of these associations were founded in 1852.

Simultaneously with the construction of railroads in France, which was the occasion of an extensive demand for credit, people decided to resort to credit also for the exploitation of landed property and the development of agriculture.

Real estate at that time experienced the greatest difficulties in procuring capital at moderate rates of interest. The main reasons were the uncertainty of the real estate régime, and the inability of the borrower to pay off at short maturity.

The solution of the problem consisted in putting an intermediary between the lender and the borrower, who, on the one hand, had powerful means of investigating the validity of the proposed mortgage, and, on the other hand, could substitute himself for the borrower in the emission of securities at long maturity.

With this aim in view, as formulated by the decree of February 28, 1852, there was founded in Paris (with a charter for twenty-five years, under the jurisdiction of the Cour d'appel) the *Banque Foncière de Paris, Société de Crédit Foncier* (Real Estate Bank, Mortgage-Loan Company) with a capital of 25,000,000 francs.

In December, of the same year, the Paris institution amalgamated with similar institutions which had been established earlier in the same year in the various departments, and formed one company, known as the *Crédit Foncier de France*. This new company received a subsidy of 10,000,000 francs from the Government; its capital increased to 60,000,000 francs, and it bound itself to advance loans under certain conditions. A first loan of 250,000,000 francs was issued, which met with but middling success.

By two decrees, of 1853 and 1856, respectively, the great institution was granted certain privileges, and placed under the strict supervision of the state. From that time on the *Crédit Foncier* rapidly developed. In 1860 it founded the *Crédit Agricole*, having for its object the furthering of the progress of agriculture. But the new company undertook imprudent transactions which led to its absorption by the *Crédit Foncier* (1877). Later, in 1882, the institution bought up another company,

the *Banque Hypothécaire*, which had been established three years previously with the purpose of doing the same kind of business as the *Crédit Foncier*, but without possessing the same privileges. At the end of the nineteenth century the *Crédit Foncier* considerably developed its activity, and its capital was successively increased to 30,000,000 (1862), 60,000,000 (1862), 90,000,000 (1869), 130,000,000 (1877), and finally, in 1882, as a result of the amalgamation with the *Banque Hypothécaire*, to 200,000,000 francs, at which figure it now stands.

The operations of the *Crédit Foncier* are of two kinds: 1, loans for short term, reimbursable in ten years at most, and 2, loans for long term, payable by annuities. In case of communal loans (where the borrower is a city or a department) the social capital must equal one-twentieth of the bonds in circulation.

From 1853 to 1908 the *Crédit Foncier* has granted 152,622 hypothecary loans for a total of 5,698,000,000 francs, of which some are for a term of fifty to fifty-nine years, and others, of sixty to seventy-five years. The communal loans since 1860 have been 38,128 in number, for a sum of 1,094,000,000 francs. In the total we obtain, since 1853, 190,740 loans for the sum of 9,501,000,000 francs.

Of this total sum there remained unpaid on December 31, 1908, the sum of 2,118,348,000 francs of the hypothecary loans and 1,852,783,000 francs of the communal loans.

The amount of real estate bonds for the same period was 2,480,000,000 francs, and of communal bonds, 1,712,000,000.

(73) While the *Crédit Foncier de France* was being established, there was formed in Paris a *Société Générale de Crédit Mobilier*. A decree of November 18, 1852, authorized the creation of this incorporated joint-stock company; it was entirely free from all government connections.

The object of this general credit institution was to establish industrial and financial companies. It subscribed shares and bonds of different industrial and financial enterprises, and in disposing of them in the way it could, it brought to bear the publicity and mechanism of bourse operations. In issuing bonds, in order to work out its own programme, it had to contribute powerfully to the development of transferable securities. It was constituted with a capital of 60,000,000 and with the power of issuing bonds for 600,000,000 francs.

Between 1852 and 1867 the *Société Générale de Crédit Mobilier* succeeded in establishing and aiding numerous influential and powerful companies. Among these were railroad, gas, maritime, loan, and insurance companies, banking institutions, etc. It was reconstituted in 1871 under the name of *Société de Crédit Mobilier*. In 1902 it combined with the *Office des Rentiers*, and another company was then formed, by the name of *Crédit Mobilier Français*, with a capital now amounting to 45,000,000 francs.

(74) Upon the model of the *Crédit Mobilier* numerous other companies and discount banks have been established since that time. *The Crédit Industriel et Commercial*, the *Crédit Lyonnais*, and the *Société Générale*, with the original capitals of 60,000,000, 20,000,000, and 120,000,000

francs, respectively (at present 100,000,000, 250,000,000, and 400,000,000), are types of these institutions. All of them little by little went over to the practice of issuing securities and participating in financial operations on a grand scale.

(75) The impetus given to transferable securities by the commercial credit institutions, as they were then known, ought not to make us lose sight of the valuable work done in this respect by the *Banque de France.* (See note to No. 55.)

Its services to national commerce have become more and more valuable in the same measure in which its powers and privileges have been gradually broadened and extended since 1808. It advanced money on public notes remitted for discount; it loaned money on deposits of French rentes, of shares and bonds of railroad companies, of the bonds of the city of Paris. Later it undertook to issue and to dispose of bonds for account of French railroad companies, which has brought them in an amount of 1,200,307,500 francs. Finally, it is known that the bank undertakes the safe-keeping of securities. This service, which in 1860 was utilized by 18,226 depositors for securities representing 916,000,000 francs, has not stopped growing. In 1890 there were 46,558 depositors for a quantity of securities representing 3,988,000,000 francs. At the end of 1908 there were 94,998 depositors, and 7,646,000,000 francs in securities were deposited. In 1895 the *Banque de France* decided to accept bourse orders, which it would transmit to the financial markets for account of its clients. In 1908 it transmitted 98,721 orders for 500,000,000 francs in capital.

(76) The great impetus which was given to the financial activity of the period between 1876 and 1881 by the successful loans launched by the French Government for the paying of its war indemnity of 5,000,000,000 francs, and which expressed itself in the establishment of many powerful financial institutions of a private character, was stopped by the crash of the *Union Générale*. The *Union Générale* was founded in 1878 with a financial, political, and religious programme. The political programme, it may be said, was carried out. But the commercial enterprises set on foot by the *Union Générale* were not all of the most fortunate kind; only a few succeeded and became prosperous. The political and religious programme consisted in supplanting the Jewish and Protestant financiers upon the field of financial emissions, and in serving at one and the same time the royalist cause in France, and the papal cause in Italy.

The pursuit of this plan involved the need of large funds rapidly acquired, and the *Union Générale* undertook a campaign for a rise upon its own shares, in order to realize an increase of its capital and dividends by forcing the prices of its stocks as high as possible. It tried to do this by buying up its own securities, for which the funds of the depositors were freely used. In this way the capital of the *Union Générale* was increased from 25,000,000 to 100,000,000 francs, and, as the new funds served to further pursue this campaign for a rise, the shares rose to unwarrantably high prices. People of all conditions eagerly bought and sold again the stocks of the *Union Générale* and of the enterprises it created,

until their aggregate value surpassed the billion mark. The mania for investment spread to all financial circles.

Finally, however, a reaction set in. Shares of the *Union Générale* began to fall. On January 10, 1882, the shares were listed 3,020 francs; on January 16, 2,750 francs; on January 18, 2,400 francs; on January 19, 1,300, and on January 27, 900 francs. On the 28th of January payment was suspended, and the shares fell to 600; on the next day they were 450. On January 30 the administrative board asked the court to appoint a trustee. On February 1, MM. Bontoux and Feder—the former president of the administrative board and the latter a director—were arrested.

Failure of the *Union Générale* had grave consequences. The Parquet of the stockbrokers of Lyon was unable to pay. Out of 30 stockbrokers, 14 owed 65,000,000 francs to their associates. Debtors and creditors alike were in great straits. A judicial liquidation took place, and the creditors received bonds which the Syndical Chamber of Lyon sells every year at auction. The stockbrokers of Nice were also caught in the panic, and their Parquet was suppressed by a decree of the 29th of January, 1889. At Paris the situation was extremely serious. The stockbrokers owed 175,000,000 francs to their clientage. The gravity of the situation was enhanced by the resulting threatening condition of the treasury. The conversion of the 5 per cent rentes had long since been under consideration; but in this disorganized condition of the market the bankers and the commercial credit associations could not proceed with a single emission. They had invested large sums in

"continuations" (*reports*). What was going to happen if the carried-over securities should remain on their hands?

The *Banque de France* then advanced 80,000,000 francs to the Syndical Chamber of the stockbrokers. The State also intervened, and effected "continuations" for the sum of 165,000,000 francs for the February settlement. Stocks were carried over from month to month during a period of seven months.[a] As a result of this event the market was so completely disorganized that for some months, and even for some years, hardly any transactions of a certain speculative range could be carried through.

The total loss in values of listed securities of that period is estimated at 4,000,000,000 francs.

(77) With the downfall of the *Union Générale* there began a series of failures, liquidations, and reorganizations of financial companies and banking institutions, which ended in the elimination of a great number of such as were weak either on account of unwarranted speculation and mismanagement, or on account of irregular constitution and distribution of fictitious dividends. Toward the beginning of the twentieth century there remained only the very strongest, which withstood the storm of the crisis by virtue of powerful resources and prudent management. These succeeded in immensely increasing their funds and their means of activity. They solicited deposits, established branch offices in the provinces and even abroad, and practised extensively discounts of commercial paper, opening of accounts, investing of their funds in "continuations," and especially issuing of

[a] Vide Léon Say, *Les interventions du Trésor à la Bourse depuis 100 ans; Annales de l'Ecole des Sciences Politiques, 1888.*

transferable securities. They have supplanted the small banker and discounter, who would charge exorbitantly for their services to commerce. But yet they have not entirely displaced the smaller banking institutions, nor the large private banker, doing business on his own personal account. These are still doing a vast amount of business independently. It is true that there is a preponderance of large companies, but this preponderance does not exist through a legal monopoly. It has been claimed that the four large credit companies, the *Comptoir d'Escompte*, the *Crédit Lyonnais*, the *Société Générale*, the *Comptoir Industriel et Commercial*, to which are joined for this purpose the *Banque de Paris et des Pays-Bas*, the *Banque de l'Union Parisienne*, and the *Banque Française pour le Commerce et l'Industrie*, are enjoying a monopoly as a matter of fact. This is not so, however, for numerous issues are made outside of these large companies. A number of smaller banks and credit companies, not included in the above list, handle some very important issues, even if they are secondary.

(78) At the end of December, 1908, the number of French credit companies listed on the financial market was about 37, representing a nominal capital of 1,492,000,000 francs.

M. Alfred Neymarck, in his report to the Institut International de Statistique, session of 1907, estimated at 155,000,000,000 francs the value of the transferable securities in negotiation in France on December 31, 1906. One hundred and fifty billions belonged to the Paris market alone, of which about 65,000,000,000 were in French securities, 67,000,000,000 in foreign securities on the

official market, and 18,000,000,000 on the Coulisse (*marché en banque*). Of home securities—the value of French rentes is estimated at 24,000,000,000 francs; of bonds of the city of Paris, of treasury bonds, including those of Departments and colonies, at 3,069,000,000; insurance securities are valued at 702,000,000; those of the *Crédit Foncier*, at 4,447,000,000; of banks and credit companies, at 3,101,000,000; of the great railroad and navigation companies, at 24,268,000,000; of railways and tramways, at 2,200,000,000; of electricity, iron mills, foundries, and coal mines, at 2,463,000,000, etc. Of the foreign securities, Russian securities are valued at about 10,000,000,000; divers other government funds, at 47,000,000,000; railroad securities, at about 6,000,000,000. In 1880 the total of the transferable securities circulating in France could be estimated at 70,000,000,000, made up as follows: Forty-five billion five hundred million of French securities, 15,000,000,000 of foreign securities, and 10,000,000,000 of securities from the departmental markets and from the Coulisse. The rapid expansion of transferable securities after the crisis of 1882 did not take place without serious setbacks from the depreciation in value of a great number of securities, following each new failure or liquidation. The movement was interrupted and checked in 1889, 1890, 1895, and in 1901.

(79) As we have seen, public credit was the outcome of the call for capital. And the agreement entered into by the borrower—State, or private enterprise—and the lender, was made manifest through a deed—the transferable security. The transferable security, in its turn, owing to the ease with which it can be distributed, de-

veloped the public credit. But, in order that the double phenomenon be easily produced, it was necessary that there should exist a public market where the one who wishes to sell his securities and the one who desires to buy them might meet each other. No doubt the seller and the purchaser do not necessarily require a public market, and, in practice, it happens that some trades are carried on without the merchandise being offered or asked for on an exchange. But public markets are none the less useful, and their accessory functions plainly stimulate the production and circulation of wealth.

The *bourse des valeurs* (stock exchange) is for securities what the *bourse des marchandises* (commercial exchange), the fair, or the market, is for traffic in merchandise.

The financial market is an *accessory* organ, because it has no part in the phenomenon of the creation of securities, or in the contract which puts them in circulation. When a State borrows, it issues a certificate to anyone who brings it money. The same is done by any financial institution which brings out an issue. The accessory organ is nevertheless useful in a high degree, because if it did not exist, the public would decline to subscribe for securities, which it could not easily dispose of in case of need of money.

(80) This consideration leads us to the examination of the French financial market, taken as it is. Is it a tool destined to facilitate the distribution of securities? Does it fulfill its mission well?

It can not be denied that it has fulfilled it, but it is quite clear that it could fulfill it only on account of enjoying the widest freedom.

The financial market was instituted in the year IX of the Republic, under such conditions that, if it had preserved its shackles, there would either have been no financial market, or the financial market would have instituted itself in spite of the law.

Is it possible to imagine a financial market resting upon 60 men, appointed by the Government, who are forbidden to do business for their own account, to have partners or representatives, to guarantee their clients' transactions, to negotiate securities without having first received the securities from the sellers and the money from the buyers, and to quote foreign government securities? One of two things: Either the public market will establish itself outside of these 60 men, or these 60 men will prevent the establishment of the public market.

It is the first of these two phenomena which occurred. On the one hand, the Coulisse injected into the public market the activity it required, and on the other hand, the corporation of the stockbrokers (*agents de change*), profiting by the activity, gradually obtained the "liberties," without the granting of which it would have disappeared. The curb brokers (*coulissiers*) dealt for future delivery for their own account and for the account of their customers; they could negotiate foreign securities. They transferred their gatherings from the boulevard to the Bourse and from the Bourse to the boulevard at any hour of the day, or even of the evening. They charged less for their services to their customers than the stockbrokers. The latter protested.

The Governments let them protest; then, as by degrees the stockbrokers, taking pattern from the coulissiers, also

began to transact time bargains and to deal in foreign securities, the authorities granted them all that had earlier been forbidden to them, without, however, granting them the abolition of the Coulisse. In 1898, however, a retrogressive phenomenon took place. We shall explain it and ascertain its meaning later.

Thus is explained, how the Coulisse was tolerated during the nineteenth century, and what led to the successive laws which somewhat altered in the details of certain operations the work of the lawmaker of the year X.

(81) But first we must make mention of a special measure passed in 1816 for the benefit of the stockbrokers. At that time they became the owners of their offices, as they were prior to the revolution. Since the year IX they had been appointed by the Government and had held a commission subject to repeal. The law now intended to permit them *to introduce their successors* with the consent of the Government.

The right of introduction is practically *an article for sale.* The stockbroker, on retiring, does not sell his office, but he sells to his successor *the right of introduction.*

This measure was brought in under the following conditions: The budget for the year 1815 having shown an excess of expenses of 133,433,000 francs, the Government of the restoration had to look around for resources to meet them.

Therefore, by the law of April 28, 1816, the stockbrokers, as well as notaries, barristers practicing before the court of cassation (*avocats à la Cour de cassation*), lawyers, court clerks, bailiffs ("*huissiers*," those who protest commercial paper, serve writs, etc.), commercial

brokers, and appraisers, acquired the right of introducing their successors in consideration of an additional surety bond, aggregating 40,000,000 francs for the totality of these ministerial offices.

It is that right, conferred on ministerial officers, to present their successors—a right which the beneficiaries may sell—which has been considered as a return to the system of vendibility of government offices. That system has been the object of much criticism. Notably, it has the grave defect of placing the State in a position where eventually it may have to indemnify the holders in a proportion ever increasing, unless it permit the evil to be perpetuated on account of its inability either to indemnify the holders or to redeem the offices.[a]

The law of 1816 can not be placed among those which were intended to render the financial market flexible.

[a] To this Rossi has called attention in a masterly way. (*Cours d'Economie Politique*, t. 1, p. 309.)

"The more we advance," he said as far back as 1840, "the more the evil increases. On the day the Government wishes to recover its full freedom of action, it would have but two serious disadvantages to choose from—some sort of revolutionary spoliation, or else an enormous sacrifice of the public treasury; and this, on account of having permitted the transformation of a personal function into a transferable property, and of having permitted, in part at least, and under another form, the revival of an old custom, which had been born from the miseries of the royal treasury under Francis I, and should have remained buried forever with the fee estates, the wardenships, the entails, and the serfdoms of the old regime. The increase of surety bonds, which took place in 1816, did not warrant that return toward the past."

Therefore, that strange compensation was, it seems to me, more a pretext than a motive for that partial restoration of an old abuse, against which, even under the old regime, powerful voices arose.

"'It is a gangrene,' exclaimed the Duke of St. Simon, in speaking of the venality of military appointments, 'which for a long time has been preying upon all classes and all parts of the State, and to which it is bound to succumb, but which fortunately is not known, or but little known, in all other European countries.'"

To raise a profession to a ministerial office is not to modernize it. But the provisions of 1823, 1862, and 1885 were different.

(82) A royal ordinance of November 12, 1823, authorized the stockbrokers to quote foreign government securities.

(83) A law of July 2, 1862, authorized stockbrokers doing business on "bourses with parquets" to take capitalists into partnership (*bailleurs des fonds*), that is to say, silent partners (*commanditaires*).

A law of March 28, 1885, recognized as legal all transactions for future delivery (*marchés à terme*)—even those which are settled by paying the difference—and removed those special obligations imposed upon stockbrokers which were of a nature rendering such operations impossible.

Finally, a law of April 14, 1898, was the crowning point of what was improperly called the reorganization of the financial market.

Concerning the law of 1885 and the law of 1898, it is necessary to make a special study of the conditions which led to their formation.

The first law has an economical importance reaching beyond the realm of the Bourse. *All transactions for future delivery are recognized as legal.*

The second is specifically intended for the financial market.

(84) The law on time-bargains (*marchés à terme*) is very important from an economic standpoint. Not only does it indicate a social progress, in that it removed the monstrous immorality which was formerly widespread, and which consisted in permitting speculators to decline to pay

their differences by presenting the plea of gambling, but it indicates, besides, a philosophical progress—a progress in the general trend of thought. The time-bargain is not simply a contract the settlement of which is postponed to a certain date, one which works itself out in time and space; *it is a contract upon generalized merchandise.*

We know that Bourse operations, whether they apply to merchandise or securities, bear upon things *in genere* which can be replaced by each other—one being as good as the others, and reciprocally. To be sure, it is easy, even very easy, to conceive of a trade bearing upon a specific object, since it is always so in retail trading: Goods against money, money against goods, be it for cash or on credit. Peter sells to Paul this or that object, payable immediately, or Peter sells to Paul this or that object, for 100 francs payable in three months; it is a time-bargain (*marché à terme*) bearing upon a specific object.

But the vast majority of time-bargains of commerce bear upon things fungible (interchangeable)—things in a generalized and not in a specialized sense.

A speculator calls upon a commission merchant; he buys from him 100 casks of alcohol and 100 bags of sugar. Those 100 casks of alcohol and those 100 bags of sugar are not in the hands of the commission merchant. This merchandise, these quantities which the commission merchant sells, are not necessarily in his stores. The contract calls for merchandise of a certain type, which the seller shall deliver on the date fixed.

Well, if it is a question of alcohol, sugar, wheat, flour, wool, or copper, on the commercial bourse, it is under-

stood that the goods will always be of a current type, applicable to all contracts.

The same applies to securities.[a]

In this way, all securities are made fungible (equivalent, interchangeable). On that principle, Peter goes to Paul, the banker, and purchases from him 25 shares *Crédit Foncier* for the end of the month. It may happen that the transaction is specific, but in most cases he does not buy 25 shares, numbered 1 to 25 or 25 to 50 or 50 to 75. He purchases 25 shares, no matter which, provided they be shares of the *Crédit Foncier*. This condition is the regular one on the Bourse.

It is this fundamental condition, necessary, we may say, for transactions for future delivery, which leads certain people to conclude that they are non-existent and fictitious. Where was the merchandise at the time of sale? Where were the securities at the time of contract? They are not found, and thereupon is based the non-existence and fictitiousness of contracts. But this merchandise is not found, because it can not be found; because, we repeat, the contracts have aimed at things *in genere*, and because the nature of the operations is such that specification has been done away with for the very convenience of the transactions. There can be seen, indeed, where lies the error of those who deprecate dealings for future delivery. An operation bears upon things assumed as equivalent and fungible (*choses fongibilisées*), and people exercise ingenuity to treat it like a transaction bearing upon

[a] It is by application of that principle that article 46 of the decree of October 7, 1890, states that "the transactions have bearing only upon certain quantities, without any specification of the securities negotiated by way of indicating their numbers or otherwise."

specific objects. It is not surprising, then, that when one looks into a contract for something which can not be found in it, one is led to conclude that that object does not exist, and that the contract is therefore fictitious.

No doubt, before 1885, the validity of transactions bearing on fungibles (*choses fongibles*), or even on securities in a general form, was recognized; but whenever a judge could see no merchandise moving, whenever there were presented to him only accounts of differences, a psychological process took place in his mind which caused him to conclude that the transaction was fictitious. All of this rests on no basis of reality, he thought. And if one of the speculators stood up for that argument, which was freely current elsewhere in popular centers, the gambling plea advanced by the debtor was freely accepted. Article 1965 of the *Code civil* states that the law grants no action for a gambling debt. Thus, a time bargain closing with a difference was considered a gambling debt. But, since 1885, it has been established that a transaction for future delivery (*marché à terme*) is legal, and if the operator means to gamble he must bear the consequences of his acts.

(85) For a long time financiers, economists, and business men, clamored for legal recognition of dealings for future delivery, and even of speculative bargains, "short" or "long" of stocks (*opérations à découvert*), or of such that close by paying the difference.

As early as in 1801 Count Mollien, while talking with the first consul, told him:[a] "It is true, General, that these transactions (*marchés à terme*) were proscribed before the Revolution by a council's decision; but when it is seen

[a] *Memoires d'un Ministre du Trésor Public*, T. I, pp. 251 to 273.

that they have never been more numerous than since that time, we might ask ourselves whether it is the law or the dealings for future delivery (*marchés à terme*) which are to be found fault with. When we then consider the course of all civil transactions, we see everything resolved into transactions for future delivery; through them towns are supplied, armies are maintained; on them are based all great commercial combinations; we praise the cleverness of the merchant who purchases provisions for a sum tenfold his capital, because he has so well gauged the requirements of consumption that the sale of his goods is assured him before reaching the maturity fixed for the payment.

"Why should not that principle, which is held in esteem in all European centers, be recognized in that place called the Bourse? Will anyone object that on the Bourse transactions for future delivery are not always *bona fide?* Should we then give up bills of exchange because dishonest merchants make ill use of them?

"If abuses have been introduced into Bourse transactions, the blame should be laid on the administration of justice, which places these transactions beyond the reach of the law; if they break public faith, the less should the courts refuse to take cognizance of this fact. Their duty is to search for and punish that breach.

"When a free man has involved himself in reckless engagements, it is in their fulfillment that he must find the penalty for his folly and his bad faith; the efficacy of the penalty is to be found in the warning it leaves; and, surely, to declare the object of the offense void for the benefit of the more guilty person, was not a salutary warning given by the jurisprudence of 1786?

"Bourse transactions have a peculiar character, in that the two contracting parties, unknown to one another, bind themselves, through the mediation of a stock-broker, who is the representative of the law (*l'homme de la loi*); he is responsible before the law for all his actions; therefore, the law should not decline to pass upon any of these actions.

"The common objections to bourse contracts are: One can not sell that which one does not own, and the law can not recognize a bargain which should never have been made. In the main, these objections are merely begging the question; it seems to me that the law should not protect that which it can not punish; it should not prohibit in Paris a mode of dealing sanctioned through long practice in London and Amsterdam.

"I do not claim that time-bargains (*marchés à terme*) are free from abuses, but I demand that, in order to repress these abuses, the contracting parties be judged according to common law on contracts."

The transactions for the account on the Bourse were, nevertheless, if not prohibited, at least made impracticable, through the texts of the old ordinances on the Bourse—the Council decisions of 1774, 1785, and 1788. The decree of 27 Prairial, year X, exacted that the stock-broker should have on hand the securities to be disposed of and the funds necessary for purchases. No doubt, to meet the requirements of the times, transactions for the account were considered as allowable, provided they were made in good earnest. At any rate, if they were not made good by depositing the securities or the cash, they were illegal.

It was thus that the stockbrokers understood the decree of the 27 Prairial, year X, on day following the publication. Indeed, on the 10th Fructidor, year X, they met and decided that they should deliver securities to one another on the day following the contract.

(86) The *Code de commerce* added nothing to the provisions of the organic law of the Bourse, but it brought in preciseness. From the draft of the code, it followed that the "short" sales and "long" purchases (*marchés à terme à découvert*—literally, "uncovered" time-bargains)—that is to say, the real time-bargains, implying credit as regards both merchandise and money—were prohibited to stockbrokers. Private individuals were permitted to deal in them. No doubt, so far as they were concerned, it might be gambling or not, according to circumstances; but no text prohibited any person from binding himself toward another to deliver securities at a given time. It was only by a special provision, that the stockbroker could not undertake to be responsible for the operations in which he acted as intermediary. Such was the provision of article 86 of the *Code de commerce*, so that if he acted as intermediary in a transaction for future delivery, he violated article 86 and ran the risk of a fine and removal. (Art. 87.)

The report on Title V of the *Code de commerce* of 1807 is explicit on that point. The reporter, Jard Panvillier, expressed himself as follows, when speaking of the "*agents de change:*"

"Moreover, the law honors their profession, in declaring that it can not be exercised by a man who has failed, unless he has been rehabilitated; and, with a special foresight

in their behalf, it safeguards them against the possibility of exposing themselves to a case of exclusion on that account, by forbidding them, under penalty of irrevocable removal, to transact commercial or banking operations for their own account and to render themselves liable for the carrying out of transactions in which they act as brokers.

"The kind of perfect confidence which must be granted them by those who avail themselves of their services, renders this measure necessary. They must not be allowed to expose themselves to the danger of compromising the interests of their clients, by compromising their own fortune in a risky or unfortunate enterprise.

"This is what the law wanted to guard against through a provision which some of them may find too severe, but which will meet with the approval of all those who are wise and act in good faith; this provision is more than ever necessary nowadays, when gambling in public securities has become a mania, causing the ruin of a large number of individuals, without any advantage to the Government or to the owners of state rentes who consider them in the light of real property and property to be held.

"The guaranty which some stockbrokers, enticed by a more or less heavy rate of commission, do not hesitate to give for a trade in effects that neither buyer nor seller possesses, and that often the tenfold of their actual possessions could hardly realize—this guaranty compromises not only their own fortunes and personal honor, but also the reputation of their association, which the honest men composing it are interested in preserving unblemished. Let us hope that the fear of being prosecuted as bank-

rupts, in case of failure, will deter those whom their own self-interest properly understood has not been able so far to restrain from entering into such risky engagements; and let us hope, also, that for want of finding solvent guarantors, the foolhardy or inconsistent men who have drawn from the English the baneful mania of what is commonly known as '*agiotage*' (stockjobbing), will forego that dangerous game, in order to apply themselves to more respectable and more useful occupations."

Thus the stockbroker, practically, can not act as intermediary in transactions for future delivery. Individuals wishing to deal for their own account, as the English do (as stated by Jard Panvillier), are free to do so. In any case, they will not find any stockbrokers to guarantee their operations.

We have seen that under the First Empire and up to the time of the Restoration the French financial market was weak; public loans were granted to London and Amsterdam houses. At that time it was necessity which drove the stockbrokers to transact bargains for the account. Speculators dispensed with them. It was therefore a question of either violating the regulations, or observing them and, thus, condemning oneself to being wiped out in short order.

(87) A famous lawsuit, the case of "*agent de change*" Perdonnet against M. Forbin Janson, reminded the stockbrokers of the severity of the regulations they violated. The *Cour de Paris* and the *Cour de cassation* (August 11, 1824) declared in force the old decisions of the Council under the old royalty, and the decree of the 27 Prairial, year X, and decided that the plea of gambling was

opposable to intermediaries who undertake bargains for the account in public securities, without previously exacting the deposit of the securities or of the funds required for the payment.

The higher Parisian commerce was stirred up. It drew up a "*Parère*" (memorial of merchants on matters of commerce) which we reprint from M. Alfred Naquet's report, in 1885, on the draft of the bill, now law, on dealings for future delivery:[a]

"*Parère*" OF 1824.

"We, the undersigned bankers, merchants, tradesmen, and capitalists, certify:

"1. The form of contract stated below[b] is the only one in use for transactions made on the Bourse under the designation of fixed transactions (*marchés fermes*) or operations for future delivery (*marchés à terme*).

"2. That in all these operations, without excepting any, it is only the seller that grants time to the purchaser, and that the latter may exact delivery of the securities purchased at his first requisition.

"3. That the operations in question are settled through the delivery of the securities sold, whether they are in

[a] *Chambre des Députés. Documents parlementaires, session* 1882, No. 1196.

[b] This is the form referred to:

"Bought (or sold) of Mr. ---------- (number of certificates) with accrued interest, deliverable on liquidation of (maturity), or sooner, at the discretion of the purchaser, against payment of the sum of ----------.

"Issued in Paris, in duplicate, the ---------- (date).

"(Signature) ----------."

The words "sooner, at the discretion of the purchaser" (*plutôt à la volonté d'acheteur*) show the discount privilege (*faculté d'escompte*) granted to the purchaser.

the hands of the seller at the moment the purchaser demands delivery, or the seller causes them to be purchased in order to effect the delivery.

"4. That in all cases, there is always, on one side, the purchase of an object which must be paid for, and on the other side, the sale of an object which must be delivered; therefore, it is not permissible to regard these kinds of operations as betting on the quotations of public securities.

"5. That dealings for future delivery, called '*marchés fermes*' (fixed transactions), as they are practised nowadays on the Paris Bourse—that is to say, restricted to a period of sixty days, and subject to the condition that delivery is expected when exacted by the purchaser—are advantageous both to the Government and to commerce; to the Government, because the State could not carry out the transactions in rentes made necessary by the financial system now sanctioned, without the assistance furnished by these forms of trade, and yet the financial system based on credit, is one of the principal conditions of the strength and power of modern government; to commerce, because these transactions present to holders of rentes a sure, expeditious, and cheap method of obtaining, whenever they wish, the funds they need, by giving as guaranty these selfsame rentes; that, on the other hand, capitalists find in these transactions the means to place their funds for as short a time as they choose, and with the certainty of being able to call them in at will. Thus, on the one hand, rentes become a real representative sign, increasing the bulk of capital, and, on the other hand, all the idle funds find employment for as long

or as short a period as is suitable to the owners. This increase in the number of representative signs and in the bulk of circulating funds necessarily tends to reduce their price—that is to say, the interest—and thereby renders to commerce the most useful of all services.

"For this reason the undersigned hold that the transactions in question are indispensable in the present situation of France, and that the jurisprudence adopted by the King's court (which rests on ancient Council decisions, given at a time and under circumstances that can in no way be compared to those prevailing in our times) is in opposition to the true political and commercial interests of our country.

"(Signed)

"J. LAFFITTE.	ARDOIN-HUBBARD.
"MALLET FRÈRES.	OPPERMANN.
"ROUGEMONT DE LOWEMBERG.	MANDROT.
"PÉRIER FRÈRES.	THURET.
"PILLET-VILL.	JONAS HAGERMANN.
"GUÉRIN DE FRONCIN.	ANDRÉ COTTIER.
"L. DURAND.	A. VASSAL.
"J. LEFEVRE.	A. ODIER.
"DECHAPEAUROUGE.	J. A. BLANC-COLLIN.
"CÉSAR DE LAPANOUZE.	G. CACCIA.
"GOULARD.	GABRIEL ODIER.
"J. F. CHEVALS.	J. LABAT."

(88) The administration of justice persisted in the same direction for nine years; but when it exhibited some tendency toward more liberality, M. Harlé, in the Chamber of Deputies, asked the "July Government"

for measures to repress speculation. Garnier Pagès answered him (session of January 23, 1833):

"If you admit, together with M. Harlé, that the seller for future delivery must deposit in advance his certificate of rentes, you would often render actual operations impossible; this is true of rentes, as of all other merchandise.

"One instance will permit you to grasp more easily what I have in mind. I will suppose that Antwerp, Amsterdam, or London quotes the rente at a higher price than Paris—a thing which happens every day; well then, if a banker has given an order to purchase in London, in Amsterdam, or Antwerp, and is in the meantime unable either to deposit the rente which he has not yet received, or even to indicate its number, by what right would you prevent him from selling that rente, for delivery as soon as it will arrive?"

To prevent him from effecting that operation, would be forcing him to gamble, since you would make him run the chances of a rise or fall which may occur between the time of purchase at the foreign exchange, and the moment the security will reach his hands.

The Harlé proposition was rejected.

(89) On July 12, 1842, MM. Bagnenault, Hottinguer, De Rothschild, Fould, Ch. Laffitte, Larien, and Lavareille addressed the following memorial (*parère*) to the Government:

"We, the undersigned bankers and capitalists, after having taken cognizance of the declaration made in 1824 by the principal houses in Paris, are eager to confirm it in the most explicit manner, believing it our duty to call the attention of the Minister to the difficulty, nay,

the insurmountable obstacles, which the great financial operations connected with public credit would experience if this method of dealing, sanctioned by custom and the requirements of the market, should be interfered with."

(90) In 1867 the Imperial Government appointed a commission to inquire into the question of time-bargains. M. L. Chevallier, a member of the commission of 1867, made a remarkable report on the subject, concluding in favor of the necessity that the law recognize dealings for future delivery.

(91) After the disaster of the "*Union Générale*," in 1882, the scandal was enormous; the Bourse had presented a frightful spectacle. The stockbrokers had completely violated the regulations of their profession. But it must be said in their defense, that, since the beginning of the century, they had been obliged to violate them, and that the different administrations, by overlooking their actions, while the merchandise brokers had been placed under the direction of the Minister of Finance, were partly responsible for the fact that certain regulations had not been followed. However, if the saying "*est modus in rebus* " (there is a mean in all things) is kept in mind, it becomes certain that in granting credits to clients, the stockbrokers lacked judgment. The spectacle presented by this very clientage was not less scandalous. Many persons occupying a certain social standing did not hesitate to refuse to meet their obligations.

The administration of justice which admitted the plea of gambling as regards time-bargains settled by a difference, permitted them to take that stand.

Public opinion was aroused.

On February 8, 1882, the Paris Chamber of Commerce passed a resolution calling on the Government for a modification of the existing laws, M. Gustave Roy preparing the report.

In concluding, that report expressed itself as follows:

"An administration of justice which would permit a speculator to carry on two deals of equal importance with two different brokers, one for a rise and the other for a fall, and, while collecting from one the profit he had made, to advance the plea of gambling toward the other, in order to avoid paying the loss which the operation showed—such an administration, I say, could not hold any longer; that fact alone would condemn it.

"Experience shows that the plea of gambling has never protected anybody but those of bad faith, and has only encouraged the excess of speculation, as was stated by M. Andrieux in his report presented to the Chamber in 1877, in the name of the seventh Commission of Initiative.

"Prompted by these reasons, and considering that the present legislation, far from preventing gambling, encourages it; considering that bad faith finds protection in the jurisprudence sanctioned; and further considering that in commercial affairs, as in any other, it behooves to allow every one his full freedom, as well as to hold him responsible for his actions—I beg to suggest that an address be sent to the Minister of Commerce, confirming the letter of the Chamber of Commerce of November 25, 1877, and requesting the Government to introduce a bill in the Chambers, declaring that article 1965 of the *Code civil* does not apply to debts resulting from dealings for

future delivery, and that articles 421 and 422 of the *Code pénal* are repealed.

(92) In the Chamber of Deputies two members, MM. Alfred Naquet and Lagrange, introduced a joint proposition tending to recognize dealings on the "long" and "short" accounts (*opérations à découvert*) as legal. The Government, on its part, appointed a special commission to study the question. It was composed of MM. J. Bozerian, senator, chairman; Charles Ferry, deputy; Clamegeran, councillor of state; Monod, councillor at the *Cour de cassation;* Laew, public prosecutor at the *Tribunal de la Seine;* Gay, director-general of government funds; Pallain, director of audits in the finance department; Girard, director of interior commerce; Gonse, chief of the division of civil matters in the ministry of justice; Lyon-Caen, professor at the Toulouse faculty; Vavasseur, barrister at the *Cour d'appel* at Paris; Baudelot, former president of the *Tribunal de commerce* of Paris; Moreau, syndic of the stockbrokers of Paris; Lecomte, stockbroker; Alphonse Mallet, regent of the *Banque de France;* Girod, manager of the *Comptoir d'Escompte;* and Durrieu, manager of the *Crédit Industriel et Commercial.*

This special commission appointed as its reporter Professor Lyon-Caen (to-day Dean of the faculty of law of Paris), and it was the elaborate work of this eminent reporter which was used as an explanatory statement for the bill presented by the Government.

(93) The reporter in the Chamber was M. Alfred Naquet. When the bill was voted upon, M. Naquet, who in the meantime had become a senator, was intrusted

with the preparation of the report before the higher legislative assembly. After being argued in the Senate, the bill, slightly amended, was returned to the Chamber, and the report was then made by M. Peulevey.

The law on dealings for future delivery (*marchés à terme*) was promulgated on April 8, 1885. Having been finally voted upon on March 28, it is generally known as the law of March 28, 1885. Dealings for future delivery are recognized as legal. They were legal before; on that point the law aimed only to do away with the surrounding uncertainties, which resulted from the special regulations made for stockbrokers. Thus, in the terms of that law, no one can, in regard to operations for future delivery, plead article 1965 of the *Code civil*, according to which the law grants no recourse to a party for the payment of a gambling debt or a bet. Article 1965 of the *Code civil* is not repealed, but it can not be applied to transactions closing by a difference.

It should be noted, however—as a result obtained from a discussion within the senate commission [a]—that if the contracting parties have in advance made a written contract, agreeing that they would not exact delivery, they will not enjoy the provisions of the law.

Finally, the law repeals the former provisions which make it obligatory for the stockbroker to have on hand the securities for sale, as well as the cash for purchase, and forbid him to hold himself guarantor for transactions in which he acts as intermediary.

Let us note, in conclusion, that the law of 1885 has a wide range. It applies to operations in merchandise and

[a] *Senat. Documents parlementaires*, 1884, No. 161, p. 12.

in securities negotiated through intermediaries other than stockbrokers.

As to securities negotiated through stockbrokers, they could *always* be sold *direct* for cash by private individuals. They could likewise be sold direct for *future delivery*, but operations settled by differences were subject to being barred as gambling. Since the law of 1885, this last plea can no longer be brought in, but the privilege of the stockbrokers is still invoked for these operations. According to a legal argument, which is very disputable (*Cour de cassation*, March 23, 1893, Sirey, 1893, 1.240), transactions for future delivery, closed by differences, can not be made the objects of direct operations. This solution is against the express wish of the lawmaker. The direct transaction, even when made for future delivery, and closed by a difference, was permissible before 1885. It should derive benefit from the law of 1885. To forbid it through indirect ways is to antagonize not only the wish of the lawmaker of 1885, but also the wish of the lawmaker of Ventose, year IX.[a]

(94) Having inquired into the law on transactions for future delivery, we shall proceed to look into the state of things since 1898.

In 1893 a tax on Bourse operations was established. At that moment occurred a particularly acute phase of the many centuries old struggle between the stockbrokers (*agents de change*) and the curb brokers (*coulissiers*).

This occurrence led to what has been very improperly called the "Reorganization of the financial market of 1898." It is important, therefore, to recite summarily

[a] See note of M. Lyon-Caen. Sirey, 1893, p. 240.

the history of the struggle of the stockbrokers of the "Parquet" against the curb brokers of the "Coulisse."

The "*coulissiers*" were men who illegally served as intermediaries in the public market.

According to M. Fremery,[a] the words "coulisse" and "*coulissiers*" originated from the fact that, in the old premises devoted to the Paris Bourse, the parties operating without the services of the "*agents de change*" met in a separate passageway or hallway (*couloir*) separated by a breast-high partition from the place where the dealers assembled. That passageway was called "*La Coulisse*" (the Coulisse).

But if that name has not been very long in use, the institution—though we can hardly give such a name to a gathering so unorganized, and, we may say, formless—is very old.

The brokers, or money changers, who did business at the fairs in the middle ages, are the predecessors alike of the merchandise brokers, of the stockbrokers, and of the curb brokers.

But an ordinance of Philip the Fair, in February, 1304, directed, as we saw, that the "*Change de Paris*" (the exchange traffic of Paris) shall be held on the *Grand Pont* (the great bridge on the Seine); it was forbidden to do it elsewhere. Sundry royal edicts, in 1305, direct that no one "shall dare traffic in exchange" ("*oser tenir change*") if he has not obtained "royal assent and permission" ("*assentiment et congé royal*"). It appears, therefore, that those who in Paris engaged in money-changing elsewhere than on the *Grand Pont*, and outside of Paris

[a] *Des opérations de Bourse*, p. 494.

elsewhere than at the "*tables*" (royal exchange premises), "without assent or permission" (and some such there surely were), were the first "*coulissiers.*"

At all times, whenever there have been privileges, some men have been found to oppose them. Of course, these men are not theorists, or pedants; they are simply men whom this or that privilege prevents from working freely, and who represent the manifestation of that mysterious force of things which tends toward freedom of trade. Commercial law owes its birth only to these protestations of practical men in apparent revolt against the laws, which become the unconscious shapers of future legislation. From the day when there was an "*agent de change*" there was a "*coulissier.*" The first called the second a thief, because he encroached upon his privilege. The second hurled back the compliment, because the privilege robbed him of his natural right. We have seen numerous council decisions under the old régime forbidding private individuals the unwarrantable interference with the function of stockbrokers. That it was repeatedly forbidden is proof certain that the offense was constantly committed.

(95) Under the First Empire, the curb brokers were already organized; there were conditions for their admission and introduction. The authorities closed their eyes. The stockbrokers complained, and requested that the unwarranted interference be forthwith referred to the courts. This request was denied by advice of the Council of State of May 17, 1809. "It must be acknowledged," said the learned M. A. Buchère, in his treatise *Opérations de Bourse,*[a] "that some of them (curb brokers)

[a] No. 33.

effected their transactions in the most honorable way, and, in some cases, even for account of stockbrokers, who considered it safe to intrust them with certain risky or somewhat irregular operations."

(96) Under the Restoration, speculation, which was considered by many as necessary for the upholding of public credit, greatly expanded. The Coulisse was tolerated—almost encouraged. In 1824, M. de Villèle publicly refused to take measures against the Coulisse.[a] In 1835, a new attempt of the stockbrokers was followed by a complete defeat.[a] In 1842, M. Delessert, prefect of police, sent a report to the Minister of Finance,[b] who, in pursuance of a complaint of the stockbrokers, had instructed him to make a thorough inquiry into the methods used by the Coulisse. The conclusion of the report was that there was no ground for prosecution, as the stockbrokers themselves were guilty of the same practices with which they reproached the curb brokers.

On February 17, 1843, the stockbrokers, in order to have the Coulisse broken up, presented a voluminous memorial to the Minister of Justice, who, however, did not recognize their request as justifiable.

(97) In 1859, a complaint made by the Syndical Chamber succeeded in changing the state of affairs; the curb brokers were prosecuted, found guilty, and expelled from the Bourse building.[c]

Much of contemporary evidence establishes the fact that this measure had the most disastrous effect upon the

[a] Eugène Léon. *Etude sur la coulisse et ses opérations*, p. 44.

[b] Alfred Neymarck, *Le Rentier*, March 17, 1898.

[c] *Tribunal correctionnel*, June 25, 1859; *Cour de Paris*, August 2, 1859; *Cour de cassation*, January 19, 1860; Dalloz, 1860, 1.40.

credit, both public and private; the "*Temps*"[a] borrows from a financial publication of that time the following statement:

"The stockbrokers, who hoped that the suppression of the Coulisse would bring back business to the Parquet, were mistaken. The business of the Coulisse has disappeared with the Coulisse itself. The market has been hit and destroyed, but has not been transferred. The Government, which expected that, by suppressing the Coulisse, it would raise the level of the public credit, has not realized its expectations."

This decline was testified to by the "*Revue des deux Mondes*,"[b] in an article from the pen of M. Poujard'hieu, published after the failure of the Fould conversion scheme:

"The discussions which have taken place in the legislature," said the author, "have called public attention to the measures which the Government thought proper to resort to, in order to foster its undertaking, in the face of the impotence resulting from the practice of monopoly. It is safe to say, that all the means employed have only succeeded in laboriously hoisting up the 3 per cent rentes to 71 francs, in order to see them soon again lagging in the neighborhood of 69 and 70. And yet that painful effort caused too glaring disasters in the markets not to hurt the government's undertaking."

Further the author calls attention to the fact that this fall of 2 francs in a restricted market has had worse consequences than a fall of 14 francs in 1848, or a fall of 8 francs in 1859, because, the risks being then divided

[a] Bulletin Financier du "*Temps*," February 1, 1897.
[b] June, 1862, p. 740.

amongst a greater number of intermediaries, the market felt more secure than in 1862, following the lawsuit of 1859.

The result was that the Coulisse reappeared.

(98) On November 4, 1861, the Minister of Finance, M. Fould, granted to the Bourse the permission to suppress the turnstiles, and, if the reestablishment of the Coulisse can not be attributed directly to this measure, we may yet be permitted to make use of an image and say that the curb brokers came back through the open door. They soon formed serried ranks. Nor was it long before affairs became enlivened. Some banks had been founded about this time, having launched some securities. In 1855 the six great railroad companies had been formed; in 1852 there had been established the *Crédit Foncier* (national mortgage loan society) and numerous banking institutions.

These corporations required a broad market, and the market widened in spite of the narrow sphere prescribed to it by law.

In 1863, the *Crédit Lyonnais* is founded; in 1864, the *Société Générale.* The law of July 24, 1867, concerning joint-stock companies, replaces the law of 1856—government authorization for limited-liability companies in shares (*sociétés anonymes*) being done away with. A new era was near at hand, when the war of 1870 broke out.

(99) After 1870, the payment of the war indemnity, and the enormous expenses necessary to rehabilitate the country occasioned great credit operations. The State, as well as private enterprises, appealed to public savings. Considerable activity reigned on the Bourse, as

everywhere else. M. Thiers never ceased to congratulate himself on the help received from the open market at the time of the emissions upon whose success depended the liberation of French territory.[a]

[a] M. Alfred Neymarck, in the course of a discussion at a meeting of the *Société d'Economie Politique*, recalled the services of the Coulisse; he showed that M. Thiers and M. Teisserenc de Bort, interim functionary of finance, had applied to the curb brokers, and had obtained information from them concerning the condition of the market. "The Coulisse," said M. Neymarck, "brought subscriptions to our loans for liberation; it kept up the rente, which, issued at 82.50 and 84.50, rose to 119 and 120. At that time, stockbrokers, merchandise brokers, and curb brokers all rendered services not to be easily forgotten." (*Société d'Economie Politique, Séance du 5 avril*, 1893, *Journal des Economistes*, 1893, n. p. 95.)

In that regard, let us also mention those eloquent lines of M. Anatole Leroy-Beaulieu: "The confession may be painful, but patriotism makes it a duty for us to acknowledge the fact that the Bourse represents one of the live forces of France. It has been for France an instrument of regeneration after defeat, and it remains for us a powerful tool in war and in peace. Let us recall the already remote years of our convalescence, after the invasion, years at once sorrowful and comforting, when with the gloom of defeat and the suffering of dismemberment, mingled the joy of feeling the revival of France. Whence came our first consolation, our first vindication before the world? Whether glorious or not, it originated on the Bourse.

"The Paris market came out unscathed from the ruins of the war and of the 'commune'—and straight from the hardly ratified peace and quelled insurrection, it threw itself into the work for France's regeneration; because it was, indeed, for France's regeneration that the stockbrokers and merchandise brokers worked under Thiers and MacMahon. In the worst days the Bourse had the uncommon merit of showing an example of faith in France. When more than one political skeptic and discouraged thinker allowed themselves to write down upon the crumbling walls of our burned-down palaces '*Finis Galliæ*,' the Bourse kept its faith in France and her fortune, and that faith in France was spread by it all around, at home and abroad. Speculation was patriotic in its way; it has exhibited a confidence in our resources which the discretion of many a wise man rated as foolhardy. Have we already forgotten our great loans for liberation? Without the Bourse, these colossal loans, the amount of which exceeded the dreams of financiers, would never have been subscribed for, or, if ever, it would have been only at rates much more onerous for the country. Without the Bourse, our French rentes would not have taken such a rapid flight; our credit, restored even more quickly than our armies, would not have equaled that of our victors, on the very morrow of our defeat. In that

It should be noted that during that period of activity, the struggle between the stockbrokers and the curb brokers almost ceased. The hostile brothers seem reconciled. But when business shall begin to slacken again, when events shall have shaken the public's confidence in the monopoly, then both sides will resume the fight.[b] The curb-brokers will exclaim against the oppressive monopoly and demand the broadening of the market, while the stockbrokers, in their appeals to the authorities, will say of their competitors that they represent anarchy, robbery, and stockjobbery in its worst form,

regard, all that justice demanded us to say previously of the higher banking institutions may with right be repeated concerning the Bourse.

"To those who lived through that pale dawn of France's recovery, that rush of the Bourse and of capitalists to offer us the thousands of millions which we required exceeded the eagerness and boldness of speculation. But even if we were to consider it but gambling and betting for speculation, such speculation was betting for France's regeneration; it bravely placed its bet on the vanquished. Those national and foreign financiers, who have been accused of pouncing upon her like birds of prey, brought to the noble wounded their dollars and their credit, and if they reaped a profit thereby, are we to reproach them for it, when they helped us to reconstruct our armies, our fleet, and our arsenals? If France regained her rank among the nations of the world so quickly, the credit for it should be mainly given to the Bourse. And to its services in war, we should, if we wanted to be just, also add its services in times of peace. Without the extensiveness of the Paris market, and the stimulus given to our capitalists through speculation, how many things would have remained unaccomplished in the recklessly overdriven condition of our finances? We should have been unable to complete our railroad system, or renew our national stock of tools, or create beyond the seas a colonial empire which shall cause France to be again one of the great world powers. When the Bourse is on trial, such credentials should not be overlooked. Before condemning it in the name of morality and private interests, a patriot should give due consideration to its services rendered for the national weal; if all its defects and misdeeds be heaped up on one scale tray, then services of like importance will easily counterbalance them." (Anatole Leroy-Beaulieu, *La Régence de l'argent*, "*Revue des deux Mondes.*" February 25, 1897, pp. 894 and 895.)

[b] A proverb says: "*Lorsqu'il n'y a plus de foin au ratelier, les chevaux se battent*" (when there is no more hay in the manger, horses fight).

and that the members of the open market are a mob of cosmopolitan speculators as dangerous for the State as for public savings.

Following a fit of speculation in shares of the *Union Générale*, which had taken place in 1882, the Lyons stockbrokers were unable to meet their engagements. The Paris stockbrokers were compelled to borrow 80,000,000 francs. Monopoly was seriously injured in public opinion, so that at the time the Government brought in a bill on operations for future delivery, M. Ménard-Dorian, also, brought in a bill, February 23, 1882, making the profession of stockbroker free to everyone.

The question was divided within the parliamentary commission, for the problem of reorganizing the market was more complicated than that of recognizing dealings for future delivery, and was, therefore, in a position to prevent the solution of the latter. Yet, though clearly set, the problem at issue was not solved, as has happened many a time in the case of other problems.

The downfall of the *Union Générale*, the need felt by the Bourse to avoid being spoken of, and the grave threat which M. Ménard-Dorian's proposition constituted for the stockbrokers' association, produced the result that the official intermediaries and their competitors, the unattached intermediaries, refrained from asking that the question of the financial market be solved in Parliament. The republican dogma was not at all favorable toward monopolies, and the Third Republic was at that time quite apt, in the eyes of the stockbrokers, to solve the question of monopoly—by suppressing it. The heavy depreciation which the panic produced in the value of seats, would have made the operation

an easy one so far as it concerned the Treasury. Thus it happened that for about two years no complaints of stockbrokers against the curb brokers (*coulissiers*) were registered.

(100) On September 21, 1892, the syndics of the stockbrokers of Paris, Lyons, Bordeaux, Nantes, Toulouse, and Lille collectively asked the Minister of Finance to demand the suppression, by every legal means, of the "*petite bourse*" (curb meeting) which took place every night at 9 o'clock in the hall of the *Crédit Lyonnais*. They claimed that any depreciation in the prices of government securities that might show itself on the market would instigate a general panic.

The surprised curb brokers called attention to the fact that the rente 5 per cent had fluctuated between 18 and 40 francs in 1800, and that in 1892 it had reached 106 francs. They added that the 3 per cent rente, which had been quoted at 60 in 1825, and which had fluctuated between 50.30 and 58.45 in 1871, was quoted at 100 in September, 1892, on the very day when the stockbrokers sent in their petition, after having been quoted at 95 in the beginning of the year.

The ground invoked against the Coulisse was certainly piteous, but it was nevertheless true that the stockbrokers were within their right when they demanded that the "little bourse" be suppressed.[a]

They undertook to forbid the Coulisse to gather during the evening in the place where it used to meet—that is to say, in a covered inclosure in the hall of the *Crédit*

[a] To hold meetings of merchants or bankers elsewhere than on the Bourse, and at the appointed hours, is forbidden by article 3 of the law of 27 Prairial, year X.

Lyonnais; but they could meet on the highway in the *Galerie d'Orléans.* That victory of the stockbrokers was, therefore, only a "paper" success. The question of taxing bourse operations was again going to fan the flames.

(101) On several occasions—notably, on December 15, 1891, November 14 and 15, 1892—bills due to parliamentary initiative were introduced on the subject of taxing bourse operations. On December 22, 1892, a bill of that sort, introduced by M. Jourde, was thrown out by 281 votes against 232, upon the remarks made by M. Tirard, the Minister of Finance, and M. Rouvier, a former Minister of Finance. The speakers had demonstrated how difficult it was to collect such a tax. Were they to tax the operations of the stockbrokers exclusively? That would be giving the curb brokers an advantage. Were they to tax the operations of the curb brokers? That would mean to recognize them, they thought. Then, should the Coulisse be suppressed? This could not be thought of. Should it be recognized? That was a grave question. In any case, the question was to be studied by itself, independently of the tax question.

However, the Minister of Finance had declared that, in principle, he was not opposed to the taxation. The difficulty which it presented was the only thing that restrained him. It did not restrain him long, however.

On January 14, 1893, M. Tirard introduced a bill having in view the establishment of the tax. The new provisions were to be introduced in the finance law of 1893, which had not yet been voted on. The difficulty was removed in the manner of the cutting of the Gordian knot by Alexander; the Coulisse was to be suppressed.

Indeed, according to the terms of the bill, every bourse operation was to be subject to a tax reckoned off on a journal, every article of which, for the securities admitted on the official quotation list, was to specify the name and address of the stockbroker through whom the transaction had been effected. The tax could be paid only by the stockbroker, and, consequently, every infringer would not only be guilty of unwarranted interference with the functions of a stockbroker, according to the old legal conditions, but would also be guilty of infringing the revenue laws. Each infringement would be subject to a fine equal to one-twentieth of the value of the securities.

The Coulisse itself would have been permitted to pay the tax only on unlisted securities. Their number was very limited. Rio Tinto, which before long was to be dealt in on the Parquet, the Alpine, Tharsis, and De Beers, were really the only securities which had a considerable circulation, without, however, being of sufficient volume to supply the needs of such a market, as was the bankers' market. The struggle was on. Viewed from the standpoint of the parties interested, the belligerents seemed both to be wrong in accepting the principle of taxation; and M. Tirard, Minister of Finance, took advantage of that fact before Parliament.

"Gentlemen," said the Minister, "you have just been told, with good reason, that at first all were opposed to the tax, claiming that it would greatly disturb the Paris market, and that it would give an advantage to the foreign markets. And then, after due reflection, the stockbrokers said to themselves: 'Perhaps the Government, in order to collect the stamp tax payable upon

the memorandum account, will be forced to apply to us, because it could not through its finance law approve an illegal and unlawful act. We should thus obtain a more formal acknowledgment of the rights which we have up to this day rather precariously exercised through our own fault.' On their side, the curb brokers, no doubt, said to themselves: 'It is quite possible that the Government will shrink before the severity of the proposed collection of the tax it intends to create and that, on that account, it may permit all those doing bourse operations to pay the stamp tax, without inquiring whether they be lawful or illegal operations.'

"Then, what was at the beginning a source of trouble and worry—the fear of placing a large portion of the Paris business in jeopardy—all that disappeared, in the hope that the respective condition of both parties would be benefited through the tax levy.

"I have, therefore, concluded that when people have no anxiety about the general welfare, because they feel at ease concerning their personal welfare, it is to be supposed that the general welfare was not compromised (very good) and that the trifling tax we propose levying on bourse operations is not calculated to be detrimental to the French market."

Thus spoke the Minister of Finance.[a]

"Let the tax strengthen our monopoly," said the stock-brokers, "and our operations alone will be legal." "Let the tax free the financial market," replied the curb brokers. "If the redemption of the offices is the main obstacle

[a] *Chambre, Débats Parlementaires, 23 et 24 février,* 1893. *Journal Officiel, 24 et 25 février.*

to an open market, would it not be just that the yield of the tax be appropriated for that redemption? If we are to be taxed, well and good, but let the money we pay in be used in freeing us. Let the tax pay the cost of reform. This is its object after all, and the only vindication for it."

Had they only been satisfied with the use of such arguments! * * * But such was not the case.

The controversy was exceedingly bitter. Pamphlets, newspaper articles crossed each other. Libels followed one another with astonishing rapidity. Adversaries challenged one another, like Homer's heroes, while in Parliament there began a debate which was marked by a good deal of passion.[a]

(102) M. Tirard's bill was adopted by the Chamber of Deputies on February 24, 1893. But in the Senate, through the intervention of the reporter-general of the finance commission, M. E. Boulanger, it was thought that the question of organizing a financial market was too important to be settled one way or another, through a vote on the budget. The severance of that project from the finance law was voted on March 28, 1893.

Two days later, on March 30, the Minister, who had been unable to carry the Chamber on a question of severing from the budget a plan of reform on the taxing of bever-

[a] The following took part in the debate: MM. Tirard, Minister of Finance; Poincaré, Reporter-General; Gauthier (de Clagny), Jourde—all speaking in favor of it; Yves Guyot, who advocated the nominating of a special commission for the purpose of inquiring into sundry plans in regard to bourses; Naquet, against the very principle of tax; Félix Faure, who advocated a counter plan, first accepted and then discarded by the budget commission, which plan allowed the payment of taxes by affixing stamps; Jullien, in opposition to the Government's bill.

ages, withdrew, and M. Peytral succeeded M. Tirard as Minister of Finance. The new Minister proposed a waiting policy to Parliament. The bourse tax was to be collected without making it necessary for the Government to trouble itself about the legality of the transaction. All those subjected to the keeping of a bourse record would have to deposit in the registration office copies of said record on fixed dates, and heavy fines would be imposed upon all infringements or frauds.

The bill was passed. It was placed in the finance law of April 28, 1893.

In January, 1894, the conversion of the 4½ per cent rentes into 3½ per cent rentes was decided upon. The operation was entirely successful. In 1895 the Minister of Finance, M. Doumer, having stated that the tax was as much of a burden on the open market transactions as on those of the official market, demanded that the tax on transactions in French rentes be reduced by three-quarters.[a] The demand was soon granted, in pursuance of a favorable report by M. Georges Cochery, reporter-general for the budget of 1896.

But the solution reached on April 28, 1893, was, as we stated, only provisional. M. Tirard, while praising his system, which had not prevailed, had promised to inquire into a reorganization of the market within a short time, and M. Félix Faure answered him: "I trust that when we shall occupy ourselves with the organization of the financial market, we shall succeed in suppressing monopoly."[b]

[a] *Chambre des Députés. Journal Officiel*, 14 *Décembre*, 1895. See also Maurice Jobit: *Les Titres étrangers et la loi fiscale*, 1896. *Annexes* p. 116 (*sur l'art. 8, de la loi de finances du* 27 *déc.* 1895).

[b] *Chambre des Députés, Séance du 24 Février*, 1893. *Journal Officiel du 25 Février.*

The system presented by M. Peytral having prevailed, M. Peytral, as Minister of Finance, undertook the same task as his predecessor. "We acknowledge, there is need to proceed with the reorganization of the French market. We intend doing it by means of a complete plan, establishing a legal organization which shall be based on freedom, but without excluding regulation. Such a plan is under advisement." [a]

Well, that plan has never been submitted to consideration, for what reasons is not known. And meanwhile there broke out what has since been called the "gold mines boom."

(103) About the middle of 1894 most publications treating of economic questions described the great industrial development brought about in the Transvaal by the gold seekers. Gold mining in the Transvaal during the ten previous years had given rise to speculation on the Transvaal and English bourses. This speculation, like everything else in this world of ours, had its good as well as its bad sides. In the south of Africa, not far from the mines, bourses were opened, and there took place some skyrocketing of quotations, followed by violent breaks. These fluctuations above and below the real value which is, moreover, quite difficult to ascertain, bring to your mind the air bubble near the water level, which oscillates in the neighborhood of the spot where it is going to settle. Some have since endeavored to compare the speculation to which the South African mines have given rise, to the "tulipomania" which raged in Holland about 1634, and to those "manias" of which M. Leon Say speaks in his

[a] *Ibid.*, 28 *Avril*, 1893, *Journal Officiel du* 29.

work "*Sur les Interventions du Trésor à la Bourse,*" or also Bagehot, in his book on the "Money Market." To be sure, there was a good deal of extravagance in the speculations which took place, but the criticisms drawn up against the mining companies and those who brought out their securities, have likewise been singularly extravagant. Thanks to the Transvaal mines, roads and railroads have been built, cities have sprung up, profiting at one stroke from all the modern improvements in the art of construction. Industry has opened South Africa and preserved it for European civilization, and, all in all, there has been an increase of wealth, of which the English and German capitalists alone seemed at the first moment to have the immediate profit.

But in the course of 1894 English houses commenced some advertising in Parisian newspapers, and soon there was noticed a pretty strong stream of bourse orders toward the London market. Some bankers thought that the French market should share in the profit derived from this stream, which the London Stock Exchange seemed to have monopolized; they opened negotiations with English bankers, and discussed the terms on which the Transvaal mining securities could be introduced on the Paris market. It was mostly in the bankers' market that they were introduced.

On June 30, 1894, only 3 kinds of gold-mining shares were dealt in on the market for future delivery of the bourse for securities (*marché à terme de la bourse des valeurs*)—including the Robinson, already dealt in before, and the Randfontein. Six months later—on December 31—there were 7, of which, however, 1 was American.

There were 12 on June 30, 1895. On December 31, 1895, 32 kinds of securities of gold mines, real estate companies, and colonial exploration companies were negotiated for future delivery in the Coulisse. At that same date there were dealt in for cash (*au comptant*) 66 kinds of gold-mining, coal, colonial exploration companies, among which, of course, should be numbered the 32 entered on the market for the account (*marché à terme*). In the London market these securities were counted by the hundreds and represented thousands of millions.

The Coulisse was not quite alone in fostering the movement. If it operated in Transvaal mining shares, it was because the shares of these enterprises were of a nominal value of 25 francs, and the decrees of February 6, 1880, and December 1, 1893, did not permit securities to be admitted on the official quotation list, if the par value of their shares was less than that authorized for the French companies by the laws of July 24, 1867, and August 1, 1893. The stockbrokers' association (*compagnie des agents de change*) later admitted on the official list the shares of "Treasury" and "Robinson Banking." It had such a good opinion of the Transvaal gold mines that it led its customers into large speculations in Modderfontein.[a] Through the attorneys for the offices many stockbrokers had become interested in the Nevmann syndicate, whose object was to place mining stocks in Paris and London. (We know that the head of the Nevmann syndicate subsidized the Jameson expedition.) Finally,

[a] See the report of M. G. Graux on his bill having in view the creation of shares of 25 francs. *Chambre des Députés, Séance de* 1896, No. 1950, in the appendices, p. 31. Hearing of the well-known M. de Verneuil, syndic of the association of stockbrokers.

on November 15, 1895, a *Banque Française de l'Afrique du Sud* (French Bank of South Africa) was established, and the president was none other than the well-known M. Herbault, syndic of the Stockbrokers' Association of Paris (*Syndic de la Compagnie des Agents de Change de Paris*), who had resigned his office in order to become president of the new bank.[a]

At any rate, on January 1, 1896, the Transvaal was invaded by a troop of volunteers under the command of Doctor Jameson. When it was ascertained that this expedition—this raid, as it was called—had failed and that the relations between the Governments of President Kruger and of England were much strained, a sudden depreciation took place in Transvaal securities, and the previous boom was succeeded by the gold-mines panic. If the disaster of the *Union Générale* had not swept away the *Compagnie des Agents de Change* (saved by the slowness of parliamentary procedure), the disaster of the gold mines was going to carry off the Coulisse, which through clever manipulations was to be alone held responsible before Parliament for the decline and the damages resulting therefrom.

(104) The gold-mining boom had incensed the *Compagnie des Agents de Change*. No doubt they had shared in the negotiations of mining securities, but not in the measure they would have liked. The "*Bulletin de Statistique et de legislation comparée du Ministère des Finances*" [b] showed that from 1893 to 1895, inclusive, of the 35,596,000

[a] *Economiste Français* of January 27, 1900. The Nevmann syndicate was liquidated and reorganized under the name of "*Association Minière*," the shares of which are quoted on the Official List March 6, 1905.

[b] January, 1898, p. 52.

francs yielded by the tax on bourse operations there had been collected outside of Paris 1,707,291 francs, and in Paris, through the stockbrokers 11,758,542 francs, while all other parties subject to the tax—curb brokers, money changers, credit institutions, bankers—had paid in 22,130,167 francs, i. e., double the amount.

First the stockbrokers thought of taking the gold mines away from the Coulisse, or at least of taking advantage of an exceedingly timely offer made to them through a truly providential chance by M. Georges Graux, a deputy, with whom M. Meline associated himself. On October 26, 1895, M. Georges Graux introduced a bill tending to authorize the creation of 25-franc shares in French stock companies (the law permits that denomination only for companies having a capital of 200,000 francs or less). On the day when French companies could be organized with 25-franc shares, no principle would stand in the way of admitting foreign 25-franc shares on the official list. M. Georges Graux was appointed reporter of his bill. He handed in his report on June 22, 1896, and, though the gold-mine panic was in full swing at the time, the worthy reporter urged that his bill be adopted, the result of which would have caused the gold mines to be transferred to the Parquet.

The stockbrokers would then be in a position to benefit by the recovery in mining stocks.

The report was never brought to debate. To tell the truth, that document was of such little substance that it could not have survived the first words in an open debate.[a] The author, in view of the comments, which were not spared in the special organs, failed to uphold his work,

[a] *Chambre des Députés, session* 1896; *Documents Parlementaires*, No. 1950.

in spite of the evident parliamentary influence, and in spite of the fact that the Honorable M. Meline had indorsed his proposition.

As we have seen, the rise in gold-mining shares had awakened the envy of the stockbrokers—a feeling no doubt quite justified, since commercial competition has no other incentive. The decline which followed was to be taken advantage of by their supporters in Parliament at a propitious opportunity. And that propitious opportunity presented itself.

The reorganization promised by the Minister, M. Peytral, had been neither studied nor prepared in the Ministry of Finance. Two worthy senators, MM. Tarieux and Boulanger, on June 29, 1897, introduced a bill relative to the exercising of the profession of stockbroker. A summary report of M. Pauliat advocated that the bill be taken up for consideration. A commission was appointed; stockbrokers and curb brokers appeared before it. The Senate was called upon to inquire into the matter. At that time a desire to drop the matter became manifest.

(105) During the discussion of the budget of 1898 in the Chamber, two deputies, MM. Lacombe and Fleury-Ravarin, each introduced an amendment, worded almost identically, with the exception of the final paragraph. Later, M. Lacombe withdrew his amendment in order to associate himself unconditionally with his colleague.

The provisions of the Fleury-Ravarin amendment were worded as follows:

"Whoever makes it a business to take up bids and offers on bourse securities must, whenever called upon to

do so by the Registry Office agents, when it is a question of securities admitted on the official quotation list, exhibit stockbrokers' statements or give particulars of the numbers and dates of statements, as well as of the names of the stockbrokers from whom they emanate, and, when it is a question of securities not admitted on the official quotation list, personally pay the amount of the tax."

This was merely returning to the scheme of M. Tirard. The Minister of Finance, the Honorable M. Georges Cochery, stated before the budget commission that he would assent to that amendment, and that the Government, represented by the Honorable M. Meline, concurred in this, in order to preserve for the Bourse the existing legislation, save for the modifying of certain petty details through decrees. This procedure would, of course, result in putting a check upon the proposition submitted to the Senate; but, said the Minister, the Stockbrokers' Association (*Compagnie des Agents de Change*) had brought in a complaint before the courts against the curb brokers, and it was necessary that the financial market be not disturbed by the incidents of a lawsuit such as was certain to be started.[a]

[a] Should the Government have ever given in under such pressure? How can the State prevent the stockbrokers from applying to the courts, if they consider themselves wronged? This is their inalienable right. The Government had only to let them act; the interested parties would certainly have looked after their own interests, and finally the stockbrokers, when better advised, would not have persisted in their original intention. The judges would have weighed and decided according to the law and the facts; if the law had favored, and, let us say, does favor, the agents of the monopoly, facts would have been stronger than the law, and would have found them to be wrong. In their own interest the stockbrokers and the curb brokers would at last have come to an understanding. The State had no reason to interfere. (Alfred Neymarck, *Journal Le Rentier*, March 17, 1898.)

The Fleury-Ravarin amendment was voted on in the Chamber and even in the Senate.[a]

(106) The Fleury-Ravarin amendment became article 14 of the law of April 13, 1898, and three decrees, dated June 29, 1898, were published in the "*Journal Officiel*" of June 30, in view of the reorganization of the financial market promised by the Minister of Finance during the debate on the budget.

Through the first decree, articles 17, 55, and 56 of the decree of October 7, 1890, were modified. Article 17 treats of the composition of the syndical chambers of stockbrokers. Articles 55 and 56 express the conditions under which the syndical chambers are bound to execute a trade in place of a defaulting stockbroker. Thus was the solidarity of stockbrokers established.[b]

[a] In the Chamber of Deputies the following took part in the debate:

Session of March 7, 1898: MM. Lhopiteau, Fleury-Ravarin, Georges Cochery, Minister of Finance; Viviani, Gauthier de Clagny, Gabriel Dufaure, and Ribot.

Session of March 8: MM. Krantz, Viviani, Georges Cochery, Minister of Finance; Gauthier de Clagny, and Fernand Crémieux.

Vote: In favor of, 333; against, 136.

In the Senate, on April 2, 1898, the following took part in the debate: MM. Raynal, Eugène Guérin, Gouin, Georges Cochery, Minister of Finance, and Prevet de Lamarzelle.

The severance of the amendment was put aside by 142 votes against 131, and this was passed by a vote of hands.

[b] The solidarity was established under the following circumstances: On March 8 M. Viviani caused the Chamber of Deputies to adopt two amendments—one establishing the solidarity of the stockbrokers, the other that the books of the stockbrokers should be audited by treasury inspectors. The Ministry of Finance caused these two provisions to be set aside by the Senate, after which the solidarity of stockbrokers was established by the decree of June 30, 1898, as stated above. The legality of the proceeding is very debatable. According to article 1202 of the *Code civil*, solidarity (outside of solidarity by mutual agreement) can be declared only by law.

The second decree increased the number of stockbrokers of the Paris Bourse to seventy, and the third decree treated of the brokerage rates, modifying those previously established by the stockbrokers themselves.

In general, the new rate prescribed was 0.10 per cent, where the old one was 0.12½ per cent, and the brokerage for the transactions in French rentes was fixed at 12.50 francs for the one-half unit of speculation,[a] while the old rate was 20 francs. On the other hand, the private regulations of the stockbrokers of December 3, 1891, were modified. The maximum number of chief clerks was increased to six (it was previously four). Provisions were made that the settlement of cash transactions in certificates to bearer be effected before the fifth bourse session following the session when the operation was made. However, from January 30, 1899, this delay was extended until the tenth Bourse, and the *obligation* for the stockbroker with unadjusted claims to "execute" (buy-in or sell-out, compel settlement by) his fellow-member in arrears was replaced by the *right* of recourse to the procedure of "execution." Finally, on July 12, 1901, a new tariff, raising brokerage rates, was established by M. Cailloux, Minister of Finance. The minimum of 50 centimes was fixed. The brokerage fee was increased to 0.25 franc for each share or bond worth less than 250 francs and 0.50 franc for securities the prices of which range between 250 and 500 francs.

The reorganization of the financial market had therefore been "botched up" under the queerest circumstances. They had come back to the Tirard system

[a] See Nos. 16 and 38, Book II.—Translator.

through the Fleury-Ravarin amendment, we said; but M. Tirard himself, although in favor of the stockbrokers' monopoly, had agreed that the question of organizing a public market was one of those whose solution could not be improvised and which could not be withheld from public discussion. Answering M. Nivert, M. Tirard said, on February 24, 1893: "After a vote has been taken on the bill submitted to your deliberation, I have in mind to place the consideration of this question before the Council of State, and to prepare a bill which shall have the advantage of having been thoroughly studied." Well, the question proposed in 1898 was the same as in 1893. Monopoly or freedom of brokerage, or, also, a mixed system, admitting of regulated freedom. Two senators spoke for freedom. In the meanwhile an amendment to the budget changed the mode of collecting the tax; and there you are. By means of decrees a Minister revises brokerage rates, arranges for the appointment of ten stockbrokers, institutes a solidarity of doubtful legal standing, and calls that operation a "reorganization." Legally, even the very word "reorganization" can not be used. Laws can not be modified by decrees; and, as decrees are based on laws already existing, it would be more correct to say that there was a suppression of the question of reorganizing the financial market, which had been proposed by two senators after the Government had failed to do so. It is hardly possible to understand at present how a question which in 1893 required such an extremely exhaustive study in the eyes of M. Tirard and of all others, could be touched upon and decided in the circumstances detailed above—that is to

say, under the most unwonted circumstances and the most contrary to precedent.

(107) For what reasons was the bill announced by M. Peytral never submitted to consideration? For what reasons was the bill proposed by the two senators in some way withdrawn from the Senate? For what reasons did the Meline ministry in 1898 entangle itself in that strange procedure, contrary to all precedents in legislative matters? These are points which have never been cleared up, and concerning which the parties most interested seem to desire to avoid all discussion.[a] Some explanations of that little financial and parliamentary *coup d'état* have been furnished, but the moderation necessary for the present study does not allow our reproducing them here.[b]

The following reasons may be substituted for or added to the above: We know that in matters of political economy the régime of commercial treaties was superseded by the régime of tariff maximum and minimum in 1892. A strong protectionist current had become apparent in the political spheres since 1878. M. Meline was the leader thereof. In the newspaper world some writers had made themselves the champions of international bimetallism and protectionism, especially MM. Edm. Théry and Jules Domergue. The Stockbrokers' Association (*Compagnie des agents de change*) expressed its fellow-feeling at an early date, and gave its support to the bimetallist and protectionist movement, either from economic conviction or through design, thinking that economic parties

[a] *Congrès International des valeurs mobilières de 1900 à Paris. Séance du 6 juin, 1900. Compte-Rendu (Paul Dupont, imprimeur.)*

[b] *Journal l'Action* of November 7 and December 12, 1903.

become political parties and that political parties have their expression, when they are successful, in executive power. The Meline ministry was, therefore, in power in 1898; it rewarded those who had supported it, while the protectionist and nationalist papers directed a virulent campaign against the Coulisse. The time had been admirably chosen. We know what painful strife had taken place in the country concerning the Dreyfus affair. In 1898 the question of knowing whether there was ground or not to review the military trial of 1894 was obscured by passions. If anyone wanted to see the trial reviewed, he was a traitor to his country, an opponent of the army, an enemy of order, a conspirator against the fair name of France abroad, and even against the credit of the State. On the other hand, if anyone else opposed the review of the trial, he was a pretorian (meaning a mercenary soldier), he was a reactionist, retrograde; the shouts of "Long live the army!" "Death to the Jews!" and "Down with the priests!" were heard in the streets and at meetings. Men of the most incongruous spheres of society combined or contended with one another.

It so happened that some of the curb brokers (*coulissiers*) who brought to our market orders from Frankfort, Berlin, Madrid, London, Vienna, and Constantinople, were foreigners. Some of them were Jews. It is easy to guess what powerful assistance the Dreyfus affair brought to the stockbrokers. The Coulisse was the victim. The nationalist and protectionist papers managed the campaign, reproached some of the opponents with their origin, and the Parliament resounded with the

saddest discourses ever uttered in the glorious French rostrum.

To-day one can not read the debates without experiencing deep astonishment at the wretchedness of the arguments that animated all this debate, which, moreover, was altogether foreign to the budget discussion. The author of the amendment, the keystone of the reorganization, M. Fleury-Ravarin, pleaded that there had been tax frauds in the open market;[a] to-day it seems to be an established fact that there were none.[b] M. Gauthier de Clagny called to account the foreigners in the Coulisse.[c] But nevertheless, they permitted the "Rente Coulisse" to stay; so that, as far as public credit alone is concerned, there are Frenchmen of ancient stock who negotiate Ottoman bank shares, Turkish rentes, and exterior Spanish. The same speaker, concluding from the particular to the general, charged the Coulisse with the emission of a security, "La Watana," which he called a swindle, an emission in which two curb brokers were interested.[d] In the Senate, M. de Lamarzelle reproached the Coulisse with having introduced the gold-mines securities,[e] but there was no question of taking away from the Coulisse the gold-mines securities in which it was dealing, and these securities will remain there. The Minister of Finance, M. Cochery, carried off the vote in the Senate by maintaining

[a] Session of March 7, 1898; *Journal Officiel* of the 8th.

[b] *Cote de la Bourse et de la Banque; année* 1898, Nos. 141, 144, 255, 278.

[c] Session of March 8, 1898; *Journal Officiel* of March 9.

[d] Proceedings were instituted against the issuers, which resulted in their being fully acquitted. (Police court of the Seine, eighth chamber, June 21, 1901. *Le Droit*, June 23, 1901.)

[e] Session of April 2, 1898; *Journal Officiel* of the 5th.

that on two occasions the curb brokers had attempted to depress the prices of French rentes and Russian rentes, both of which were dealt in only on the "Parquet" by the stockbrokers.[a] The fact is substantially incorrect.

[a] Here are the very words uttered by M. Cochery, Minister of Finance. They were taken from the *Journal Officiel* of April 3, 1898, in the report of the session of April 2:

"Just now a singularly painful event was recalled to our memory. On two occasions, while in France everyone rejoiced when the journey of the Russian Emperor in France and the journey of the President of the Republic . . ." [Shouts and interruptions.]

M. DE LAMARZELLE.—"But this is quite correct."

The MINISTER.—"Gentlemen, I wonder at these protests. [Speak, speak.] I am bringing with me particulars for the information of the Senate, and with no thought in mind but the public welfare.

"I say that on two occasions, at a time when events gave France more confidence in herself and in the future, at a time, consequently, when it seemed that an upward movement in the securities of the two allied nations was due, there occurred in the market—not in the official market, but in the open market—tactics calculated to cause a considerable decline."

Well, the Russian rentes were dealt in on the open market neither in 1896, when the Russian Emperor visited Paris, nor in 1897, when M. Félix Faure went to St. Petersburg. They were dealt in exclusively on the official market, so that it was materially impossible for tactics to be set at work in the open market against the Russian rentes.

As to the French rentes, we give below the comparative rates in the official and the open markets, according to the Official Quotation List for the former and according to the "Cote de la Bourse et de la Banque" for the latter.

(*a*) Prices of French rentes, 3 per cent, from October 3 to October 8, at the time of the Russian Emperor's trip to Paris:

October 3	Official market	101.80	101.60	101.65	-------
	Open market	101.78	101.57	101.80	101.62
October 4	Bourse closed.				
October 5	Official market	101.57	101.55	101.70	101.70
	Open market	101.53	101.71	101.70	101.70
October 6	Bourse closed.				
October 7	Official market	101.67	101.75	101.50	101.55
	Open market	101.68	101.72	101.50	101.50
October 8	Official market	101.67	101.75	101.55	101.55
	Open market	101.68	101.73	101.53	101.53

However, he permits the "*Coulisse des rentes*" to remain in existence. The same Minister advanced as a reason for supporting the Fleury-Ravarin amendment, that the Stockbroker's Association had entered a complaint against the curb brokers.[a] Thus he desired to avoid the disturbance which might have befallen the financial market, and he fulfilled the expectations of the stockbrokers before they obtained such fulfillment by legal means. This time the matter was taken out of the court's hands, as it had been taken out of the Senate's. All is chaos and anarchy in that discussion and in those irregular proceedings. MM. Lhopiteau, Viviani, and Ribot called the Chamber's attention to that fact,[b] and notably M. Ribot, who, however, declared himself in favor of the stockbrokers' monopoly. M. Gouin, in the Senate, president of the commission appointed to look into the Trarieux-Boulanger proposition, vainly protested.[c] Inconsistency in arguments; illogicalness in solu-

(*b*) Prices of French rentes, 3 per cent, from August 23 to 27, at the time of President Faure's trip to Russia:

August 23	Official market	104.87	104.90	104.82	104.87
	Open market	104.93	104.93	104.83	104.92
August 24	Official market	104.85	104.90	104.82	104.87
	Open market	104.88	104.93	104.83	104.90
August 25	Official market	104.85	104.92	104.85	104.90
	Open market	104.87	104.93	104.87	104.90
August 26	Official market	104.84	104.87	104.60	104.60
	Open market	104.90	104.91	104.62	104.63
August 27	Official market	104.75	104.77	104.60	104.65
	Open market	104.78	104.78	104.60	104.70

[a] Senate, session of April 2, 1898; *Journal Officiel* of the 3d.

[b] Chamber of Deputies, session of March 7, 1898; *Journal Officiel* of the 8th.

[c] Senate, session of April 2, 1898; *Journal Officiel* of the 3d.

tions. What of it? The vote on the budget of 1898, which was to take place before the end of the year 1897, is away behind time; elections are approaching. There is need to hurry. Minds are disturbed. Once more the Dreyfus affair is in full swing. The ministry obtains what it asked for.[a]

(108) The curb brokers resorted to libels in answering the attacks they were subjected to in the newspapers. But the discussion gained neither in broadness nor in theoretical interest. The two parties fired their grievances at each other, and it must be admitted that if the Stockbrokers' Association did not deserve victory, the coulisse party deserved defeat. Hardly had the law of 1893 permitted them to deal publicly in listed securities when the curb brokers entirely lost sight of the fact that that state of things would only—nay, could only—be temporary. To trade, to buy, or to sell—that was all that concerned them. The gold mines engrossed their attention. They lacked entirely the sense of professional

[a] The Honorable M. Cochery, who presided at the *Congrès International des valeurs mobilières* (International Congress of Transferable Securities) in 1900, condescended to acknowledge to the author that the arguments brought forward in favor of the freedom of the market (in the session of June 6 of said Congress) were mostly new to him; that it was a matter of regret for him that, for some inexplicable cause, these arguments had never come to his notice; and that, if he had been aware of them, he would have hesitated in extolling the prevailing system in its totality. These words do great honor to the Minister. Moreover, the Honorable M. Cochery in his closing speech of the Congress—a speech bearing the stamp of great elevation of mind—made plainly known the emotion he had experienced during the session devoted to the inquiry into the organization of bourses: "Relating to the market organization, the debate at one time assumed a truly passionate aspect but passionate in the right way—the passion resulting from the wish to protect common interests." [Loud applause.] Stenographic report of the Congress, C. I. P., 308, P. Dupont, printer.

orientation. Many looked upon their profession as some sort of tolerated condition, to cease the day it would suit the stockbrokers to have it cease. They had no idea of a natural right to be transformed into a positive right, and it was the lack of this notion that caused their reply to be so little interesting. "We represent such an amount of taxes, licenses, such a number of telegraphic messages, we employ so many clerks,"—this was the level to which the discussion rose, unless once in a while there happened an argument "*ad homines*" in answer to those aimed at them. The one who evoked an economic principle was called a theorist, a transcendental metaphysicist. Moreover, there was no discipline on the Coulisse. Its president, M. Alphonse Lange, who died shortly afterwards, undoubtedly should be given credit for wanting to offer energetic resistance. Personally very wealthy, he might have, like many others, said to himself that, if conquered, the defeat meant but little to his own personal interests. Yet he put up a really good fight, but he was little adapted for such discussions; moreover, no one among the curb brokers—a thing unheard of—seemed prepared for them. Besides, had not the announcement been given out that twenty new offices of stockbrokers were to be created?[a] Many of the curb brokers intended to be candidates for these new offices. It was, therefore, necessary that the opposition of the crowd should not be too fiery, lest all of the candidates be rejected; and these, being more or less clear-sighted, stood in the way of a too energetic

[a] The Minister of Finance confirmed that item of news in the Chamber of Deputies, March 8, 1898, *Journal Officiel* of the 9th.

action for the defensive or the offensive. But a group of professional men, whoever they may be, containing, in spite of its immense resources, such elements of weakness, is incontestably destined in advance to defeat. Financiers make the great mistake of not sufficiently taking into account that moral force and professional dignity are worth more than gold. However strong may have been the cause of the Coulisse, its advocates failed in their efforts on its behalf, and it was no easy matter to champion it in Parliament, because its defenders were badly treated in certain publications.

Now, if the curb brokers had to be defeated—if, as a special group, they deserved the defeat they had experienced—was not their cause superior to, did it not go beyond, the individual members; were there not sufficient grounds to watch against the strengthening of the monopoly; was it not necessary to beware of having recourse to surreptitious means in proceeding to a reorganization of the market; was it not necessary that the Bourse should be either free or regulated?

It seems that the act of reorganization should have been prompted by considerations superior to the interests of the stockbrokers or of the curb brokers. At any rate, let us see what took place within the Coulisse on the day following the reorganization.

(109) After the "reorganization," the Coulisse remained composed of the following elements:

The "*coulisse des rentes*" (Coulisse for rentes) remained the same as before. It keeps on in a state of being tolerated.

The "*coulisse des valeurs*" (Coulisse for securities) does not any longer exist in a state of being tolerated. Curb brokers deal freely, as intermediaries or otherwise, in securities not susceptible of being quoted, whether these securities be such that the stockbrokers do not care to quote, or such that they are not allowed to quote. In the latter category are found the foreign securities, in denominations of 25 francs, which the French law does not permit for French corporations. (Law of August 1, 1893; decree of December 1, 1893.)

Under these conditions, a number of bankers who make it a practice to deal among themselves in the Paris market, established two professional syndicates, under the terms of the law of March 21, 1884, concerning syndicates: one for the bankers dealing for future delivery (*à terme*), and the other for the bankers dealing for cash (*au comptant*). Of course, one may belong to the profession without being connected with either of the syndicates. There is nothing to prevent a banker from purchasing certain securities from another banker, whether he belongs to a syndicate or not, but members of syndicates constitute groups only among themselves.

The Coulisse is not officially known under that name. The professionals on the bourse who are not stockbrokers (*agents de change*) are called bankers (*banquiers*). The curb brokers (Coulisse members) in rentes form the "*groupe des Banquiers en Rentes Françaises.*" The groups for other securities are formed by the members of the "*Syndicat des Banquiers en valeurs au comptant*" (syndicate of bankers dealing in securities for cash), and

of the "*Syndicat des Banquiers en valeurs à terme*" (syndicate of bankers dealing in securities for future delivery). A special group is formed by the "*Union des Banquiers*" (Bankers' Union), which deals in commercial bills. The "*Union des Banquiers*" has always kept out of the quarrel.

(110) Truly it would be judging superficially, to conclude from the above that conditions are satisfactory. The condition of the Coulisse for rentes is necessarily precarious. To be tolerated is neither a prosperous nor a progressive condition.

As to the Coulisse for securities, according to the decision of the *Cour de cassation* of June 1, 1885,[a] as soon as a security is admitted to the Official Quotation List, the dealings in the same become an attribute of the monopoly. In that regard, therefore, there is yet a relative condition of toleration. The same applies, in a strictly legal aspect, to securities concerning which an agreement was reached in 1901 between the Stockbrokers' Association and the bankers dealing in securities for future delivery. Finally, as to foreign securities which can not be officially quoted, because their denomination is inferior to the par value of French shares, a mere reduction of the limit fixed by French lawmakers would result in rendering available for quotation on the "Parquet" the 25-franc shares of foreign corporations. This change is eagerly sought by the Stockbrokers' Association.

(111) As to the stockbrokers' monopoly (*monopole des agents de change*), it reigns supreme, as sovereign master, outside the restricted sphere in which the Coulisse oper-

[a] Sirey, 1885, p. 257.

ates. This is equitable neither from the standpoint of public justice, nor from the economic point of view, nor from that of the State's interests.

The principles of public justice, belonging to the natural or civil order, refer to the rights of individuals. They include personal liberty, civil equality—that is to say, equality before the law, the right of assemblage, the freedom of labor, of commerce, and of industry. Proclaimed by the Declaration of the rights of man and of the citizen (*Déclaration des droits de l'homme et du citoyen*), on August 26, 1789, they are to-day the foundation of French public rights, and have been mentioned either explicitly or implicitly in all constitutions:

"Of all monopolies intrusted to ministerial officers," said M. Ducrocq[a] "there are few which are more disputed or more disputable, from the standpoint of principles, than the stockbrokers' monopoly. Their office, indeed, is one of those in which the character of public office has the least share, and in which, on the contrary, the professional and even the commercial character occupies the most important place. The negotiating of bourse securities, in return for a compensation, is no more a public function than the selling of any other kind of merchandise

"We can conceive of no serious reason, drawn from the interests of public credit, to maintain the market for bourse securities within the hands of a close corporation. This dealing in bourse securities is indeed the *essential* part of the vocation of the stockbroker; his other duties are

[a] *Cours de droit administratif et de législation française des finances* T. III, No. 4, 215.

mere accessories. Well, there is no doubt that, in order to give to the trading in securities the moral and material safety which is indispensable for public credit, there is no necessity to turn it, contrary to its nature, into a public function. It is sufficient to regulate and to control the profession, which thus becomes reconciled, within the measure demanded by public interest, with the principle of freedom of labor and commerce.

"The other duties of stockbrokers—the verifying of quotations and the certifying of transfers—are accessories of which the stockbrokers might be relieved, so as to remain invested only with their principal and essential rôle—the rôle of dealers in securities. There would be no more pretext for monopoly. A few *real* officials could be intrusted with the duty of certifying transfers and drawing up the quotation lists. At any rate, if, instead of proclaiming the markets absolutely free, the law were to suppress the monopoly, and to regulate the profession by the indemnity system applied to merchandise brokers by the law of July 18, 1866 (No. 1208), could not then the new syndical chamber continue to provide for those two features, in a wide-open corporation, under requirements of legal qualifications, morality, and solidarity? The fixed time and place for holding the Bourse, its publicity, the trading in a loud voice, are such sure bases of genuineness for establishing the quotation list that the regulation of the profession should certainly suffice to allow it to continue attending to the matter by itself. Does not the syndical chamber of the stockbrokers (*chambre syndicale des agents de change*) content itself with merely registering the quotations of the prices set up by the exchange and

metal brokers, though legally it should be prepared by the syndical chamber itself? It is therefore not necessary, for the verification of quotations, that there exist '*agents de change*,' holders of ministerial offices.

"France is about the only country whose financial market is in the hands of intermediaries who are, in fact, the owners of their offices, invested with absolute monopoly. There are even countries where the freedom of the market is complete, as in England, where the Bourse, called the Stock Exchange, is a private institution, elective and subject to its own by-laws; in the United States, where the organization is the same; in Belgium, since the law of December 20, 1867, which proclaimed the free exercising of the functions of merchandise brokers and stockbrokers; in most of the Swiss Cantons, excepting, however, Basle, Geneva, and Zurich, which have monopolies; and in the South American Republics (Argentine Republic, Brazil, and Paraguay). In all other countries, the financial market system is built up on the principle we recommend, of the freedom of the profession combined with its regulation. Such are the legal provisions of the German Empire, Austro-Hungary, Russia, Italy, Spain, Portugal, Holland, and the Scandinavian States."

MM. Lyon-Caen and Renault point out with the same clearness, that mediation in negotiating securities possesses in itself no attribute of a public function. We quote:[a]

"It should be noticed that in 1866 nobody asked that the stockbrokers' monopoly be suppressed. Sundry reasons have often been brought forward in favor of its being maintained. Their part is not limited to trading

[a] *Traité de Droit Commercial*, *T.* IV, No. 1035.

in bourse securities; they guarantee the identity of parties and the genuineness of signatures for the transfer of government and other securities; they are necessarily, for a certain time, depositaries of important sums and numerous securities; every day they verify the quotations of securities, especially government securities. Thanks to the stockbrokers' monopoly, the Treasury enjoys perfect security as to the transfers involving its responsibility; transactions are carried out with great rapidity, and the interest of inexperienced people, who have to hand in their securities or their money, is protected. Such is the summary of the reasons given by the Government in the explanatory statement of the law of July 18, 1866. (J. Bozérian. *De l'Institution des Agents de Change.*) These arguments advanced in favor of the monopoly held by the stockbrokers are not decisive. Mediation in negotiating securities has nothing in itself constituting a public function. Moreover, one could conceive that freedom was allowed in this matter, and that, without monopoly, measures had been taken for the verification of quotations and for the avoidance of the worst abuses. Besides, there are many countries where there is no monopoly either for the brokerage in merchandise, insurance, and freight, or for the mediation in negotiating securities, and yet the freedom does not appear to stir up any complaints. See, especially, the Belgian law of December 30, 1867; the regulation attached to decree of December 14, 1882, given out for the execution of the Italian commercial code of 1882; and the Hungarian code (art. 524 *et seq.*) The German commercial code (art. 66 *et seq.*) authorizes official brokers, leaving to private individuals the right to do

brokerage as private brokers. This code reserves the right for each State to establish a monopoly for the benefit of official brokers (art. 84).

"None of the States, however, has availed itself of this privilege, while Bavaria, Wurttemberg, and Hamburg have each abolished the monopoly there existing. In Bremen (1867) and in Hamburg (1871) the official brokers have been suppressed. In Austria the law of April 1, 1875, has sanctioned the monopoly; but the law has shown no results. The private brokers remain in fact, and operate as commission men with the brokers themselves. (V. Endeman, *Handbuch des Deutschen Handelsrechts*, III, pp. 135 and 137.)"

(112) Leaving now the critical analysis of jurists, and passing to the examination of the question of the stock-brokers' monopoly from the economic standpoint, we can not but condemn it in the most unequivocal terms.

Let us observe, however, that public justice and political economy have such affinities in many respects that, when the economic principles have passed into the domain of law, it is impossible to distinguish between the considerations depending upon the one or the other science. Moral and political sciences, moreover, are not separated by impenetrable walls, and the divisions set up by men for the accommodation of their reasoning in no way interfere with the community of principles on which they depend. Thus we may say that the considerations of public justice we have just expounded serve as an introduction to those which are to follow.

The modern doctrine of monopoly does not derive it any longer from a royal or state prerogative. The right

to labor belongs to all. Certain lines of work are subject to special conditions in France—the practice of medicine, or the practice of pharmacy, for instance; but inquiring into the conditions for recruiting professional men for these practices, we see that there is no monopoly on them. All those who meet certain conditions may be physicians or pharmacists. Monopoly exists when the State exercises certain public services, or carries on a certain industry, or again, when it deprives certain people of the right to labor, granting it to others in consideration of a fee or gratuitously. In the first case it is a public monopoly, in the second it is a private monopoly. Well, the stockbrokers' monopoly is exercised by ministerial officers, not for account of the State, but for *their own account.* This is a private monopoly, to which all economists are strongly opposed.

"Like all monopolies, but more justly than many others, the stockbrokers' monopoly is furiously attacked. It may be impossible to give decisive reasons in its favor, though in the last resort it may be acknowledged that the Bourse intermediaries should be bound to furnish personal guarantees."

Thus expressed himself M. Paul Cauwés,[a] professor in the Law Faculty of the Paris University.

M. Courcel-Seneuil expressed himself as follows:[b]

"The monopoly, giving rise to exceptional profits, creates an entirely artificial property, built up at the public expense and for the benefit of the first holders, a property acquired without labor, growing without labor

[a] *Précis d'Economie Politique*, *T.* 1, p. 648.
[b] *Traité d'Economie Politique*, 1801, *T.* 2, p. 125.

with the increase in population and general wealth, and having no justification."

At the congress of 1887 of the *Association Française pour l'avancement des sciences* M. Arthur Raffalovich expressed himself as follows, in a lecture on the Paris Bourse:[a] "In spite of the increasing value of transferable wealth of the transactions effected daily at the Bourse, France presents the strange phenomenon of a legislation relatively stationary, of an old-fashioned regulation, which is not in keeping with the requirements of the times * * *. The monopoly of the stockbrokers seems to me doomed to disappear; it does not exist in any of the great European markets."

The *Traité d'Economie Politique* of M. Joseph Garnier,[b] after having expressed the view that (No. 191) "all artificial monopolies in favor of individuals" are contrary to justice, detrimental to production, and have a tendency to assume the character of "abusive and iniquitous" privilege, declares that those are the vestiges of the guild system that have to be eradicated. The author expressly aims at the ministerial offices of stockbrokers—after having shown that in March, 1858, the "Butchers' Guild" (*corporation*) had been suppressed, in 1863 the "Bakers' Guild," and in 1866 the "Commercial Brokers' Guild." (Footnote under No. 196.)

It would not be difficult, however, to find also a good many complaints in the literature of the time coming from those whose privileges were to be suppressed.—"If the butchers and bakers were no longer constituted as a

[a] *Comptes Rendus de 1887*, Masson, editor, p. 984.
[b] Edition of 1889, brought up to date by M. André Liesse.

privileged corporation, everybody was to die of hunger!"—"As for free brokerage, it would be even a much greater calamity. A lot of vagabonds would undertake to work as brokers, and would prostitute commerce."—The legislature of 1866 took no notice of these arguments, and nobody wants monopoly any longer. It was, moreover, what had already happened a century before. When, in 1776, all corporations were threatened, the six principal trades unions addressed petitions and requests, and explained that wardenships, masterships, and guilds secured for consumers integrity in contracts and quality in merchandise. The arguments in favor of the "*agents de change*" are exactly the same as those of the guilds of the seventeenth century and of the holders of privilege of 1866.

The Société d'Economie Politique in 1859[a] discussed the monopoly of stockbrokers. MM. Reybaud, Wolowski, Michel Chevalier, Courcelle-Seneuil, P. Coq, Courtois, Dupuit, de Parieu, and J. Garnier took part in the discussion, which terminated in condemning the monopoly. In 1893 the same discussion presented itself and concluded in the same way. The following took part in the discussion: MM. Courtois, Brandts, and Alfred Neymarck. The latter expressed himself energetically against the monopoly of stockbrokers, and M. Gide declared "the institution as entirely undeserving of interest."[b] In 1898,[c] right before the "Reorganization," the *Société d'Economie Politique* expressed itself again energetically against the monopoly of stockbrokers. Only M. Manchez upheld it;

[a] *Journal des Economistes*, April 15, 1859.
[b] *Journal des Economistes*, April 15, 1893.
[c] *Journal des Economistes*, June 15, 1898

but those who spoke against it were MM. de Montplanet, J. Siegfried, Neymarck, Emmanuel Vidal, and Fréderic Passy. The latter, who closed the debate, expressed the opinion that the monopoly, when held up as the means of guaranteeing the genuineness of quotations, carried in itself the denial of such genuineness. The Paris Chamber of Commerce expressed an opinion unfavorable to the stockbrokers' monopoly,[a] and the *Tribunal de commerce de la Seine*, when asked for advice concerning the expediency of creating new offices in completing the "reorganization" scheme, declared itself against the measure.[b] So we see, it is not alone the economists who are opposed to the monopoly, but also the business men, who every day struggle with realities.

It has often been claimed that the stockbrokers' monopoly was necessary for the welfare of the national credit. But facts singularly deny that assertion. Why was it necessary in 1898, that, simultaneously with the upholding of the usefulness of bolstering up the stockbrokers' privilege by the Honorable M. Cochery, he should undertake to tolerate the existence of the Coulisse, placing it, in fact, under the exclusive supervision of the Stockbrokers' Association (*Compagnie des Agents de Change*)? No argument could be more flatly contradicted.

Moreover, how could the "*agents de change*" support the country's rentes? It should be borne in mind that in the countries whose rentes enjoy the best reputation among the investing public in London, Berlin, and New York, there are no ministerial officers for the negotiation

[a] May 14, 1898, *Cote de la Bourse et de la Banque* of May 17.
[b] May 25, 1898, *Cote de la Bourse et de la Banque* of May 26.

of securities. Moreover, the stockbrokers in France can not undertake bourse operations for their own account, according to article 85 of the *Code de Commerce*. But one can uphold the price of a merchandise or a security only by buying it and by meeting repeated and persistent offers by bids of equal force, able to counterbalance them and force the short sellers to cover. We have seen before that, on the contrary, the French national credit was built up on the freedom of transactions.

Some imagine that to be admitted to the official quotation list is a guarantee to the public of the intrinsic value of the enterprise the securities of which are quoted. This is erroneous. Public savings derive no benefit of increased safety from the stockbrokers' monopoly. This is no reproach to monopoly. It essentially could not be otherwise.

Below we cite the opinion on that subject given in 1875 by the Syndic of the stockbrokers, Moreau, at the General Assembly of his colleagues.[a]

"It is to be much regretted that our duties are so little understood by the public, that some of our proceedings are charged with a function they do not possess, and which they never did possess. Often some people wrongfully imagine that the admission of a security on the official quotation list, is a kind of indorsement given that security, a testimonial in its favor, an introduction by the syndical chamber.

"Nothing is further from the truth.

"The quotation list is simply the verification of the prices at which a security has been dealt in. Whenever a

[a] *Semaine Financière* of February 7, 1875, p. 137.

certain number of capitalists choose to effect a sufficiently large number of transactions in any given enterprise, whether good or bad, it is for them, and not for us, that the delicate task of price-fixing is reserved; and, if it is done within the conditions exacted by the revenue laws, and allowing sufficient competition and publicity, we can not refuse to serve them, since we are in possession of a monopoly, and we are bound to execute orders."

Existing theory is in unanimous agreement with this opinion.

"It should be noticed," said Mollot,[a] "that, although the Syndical Chamber is intrusted by law with the duty of verifying quotations of securities, it can not guarantee their value. It is not called upon to inquire into their merit, whether as to their form or as to the solvency of the debtors. The value of the securities may vary ad infinitum, without ever making the Chamber responsible for it. It is for those who operate to investigate the nature and soundness of enterprises. They buy at their own risk."

In his *Dictionnaire de Droit Commercial*[b] M. Ruben de Couder expresses himself as follows:

"The Syndical Chamber does not guarantee the value of the securities the quotations of which it verifies. It is for those who operate to satisfy themselves as to their soundness."

In the "*Dictionnaire universel de la Bourse et de la Banque*"[c] we read: "It is not correct to imagine that

[a] *Bourses de Commerce*, No. 479.

[b] Under "*Agents de change.*"

[c] Uncompleted work published under the management of M. J. Bozérian under "*Admission à la cote*" (*Comité des Publications scientifiques et industrielles*, 5, *cité* Palgalle).

admission of a security to the quotation list is some sort of sanction given to that security, like a testimonial in its favor, a reference of the Syndical Chamber."

M. Buchère [a] limits the responsibility concerning the admission to the quotation list, to the case when securities have not been regularly issued. This is common law; this is not the principle of a special responsibility pertaining to the stockbrokers. No matter whether one is the issuer of the stock, or only aider and abettor, he incurs the same responsibility.

M. Abel Valdmann is explicit on that point:

"The statement of all the qualifications as to form, making a security fit to be quoted officially, does not involve—in fact, has no connection with—the statement of its merchantable qualifications; that is to say, of those relating to the intrinsic value of the security." [b]

And later the same author adds:

"There has never been found, and there never will be found, a court that will countenance the absurdity, that the admission to the quotation list guarantees to the buyer that he is making a good investment. Well might we ask what guaranty the syndical chambers would then give to the seller, who is likewise one of the contracting parties in every trade, and quite as interested as the purchaser." [c]

To be sure, no foreign security can be admitted on the quotation list without the positive permission of the Minister of Finance, but this in no wise renders the Minister liable.

[a] *Traité des valeurs mobilieres*, No. 1108.
[b] *La profession d'Agent de Change*, No. 313.
[c] No. 329.

Since 1837 the *Chambre Syndicale des agents de change* has asked the Minister of Finance to undertake to give an opinion in last resort on the admissions of new securities to the quotation list. The Minister, M. Lacave-Laplagne, declined all responsibility, acknowledging, nevertheless, that the responsibility should not fall upon the Syndical Chamber.[a] Never since has any minister accepted such responsibility. By the way, the right the Minister of Finance has to forbid a foreign security from being admitted to the quotation list is independent of the question of monopoly, and that right may be maintained whatever be the régime of the financial market.

The actual financial power of the Paris stockbrokers is put forward as an argument, and it is affirmed that our financial market is the first in the world. In our opinion, even granting that this is true, which is far from having been proven, the cause is confounded with the effect. When a country, owing to its geographical location, its climate, and the character of its inhabitants, possesses numerous natural riches, and even moral riches, they cooperate in increasing its wealth; when it has the advantage of certain political and economic conditions, when it enjoys a monetary and commercial organization which promotes, instead of paralyzing, human activity in most of its manifestations, then that country is rich and deserves to be rich. And it may then happen that some organization, defective in itself, and the source of manifold vexations, is nevertheless prosperous, as much on account of certain facts of adaptation as because it

[a] *Dictionnaire universel de Bourse et de Banque*, under "*Admission à la Cote.*"

unavoidably lies within the reach of the rays of national wealth. It reflects that wealth. But the Paris Bourse does not owe its prosperity to its organization. Seventy ministerial appointees intrusted with the negotiation of 130 billions of transferable securities are powerful personalities. They would be more powerful if they were but 35. They would be more powerful if there were but 20 of them, or 10 or 5, or even 1—if there were in the market but 1 autocrat, a single arbiter of securities, centralizing bids and offers, and the king of the Bourse, just as we see in America an oil king and a steel king.. In such a case the soundness of a market is more seeming than real. If that system had been applied to provisions and merchandise, infinitely more necessary for consumption than rentes or shares in companies, the market for wine, bread, and meat, appropriated by a few barons, might, perhaps, be stupendously high, but in this respect experience speaks in favor of freedom of trade only. It seems therefore necessary that public and private credit should enjoy the benefit of an organization more pliable and more in harmony with the general condition of a country's commerce. Let us therefore beware of mistaking the appearance of force for force itself—a deception that should impress us no more than the sight of the effigies of iron-clad warriors, standing on rich trappings in a military museum. If our financial market were opened to all who have funds and understand the profession, it would be stronger still. If the market's favorable situation were distributed among several hundred individuals, the division of risks would render the market more stable, competition would secure for our market the

desired elasticity, and, if wanted, regulation under the supervision of the Minister of Finance would create a condition half way between unlimited freedom, which, with more or less reason, scares so many people, and monopoly, which is an old outfit, in no way suiting our customs, and disturbing the harmony of our laws without rendering the services expected from it.

As another argument in favor of a monopolized market the joint liability of the brokers is pleaded. It is indisputable that when the public is told: "The *agents de change* are conjointly liable," it receives a pledge on which it rests its faith, and yet it is certain that the joint liability of the stockbrokers is perhaps the most detestable of all measures passed in 1898.

It must be admitted that M. Cochery, the Minister of Finance, energetically contested the measure of the stockbrokers' joint liability. He called attention to the fact that the result would be to weaken in the stockbroker the care for his personal responsibility.

Then, yielding to the objections of some deputies, who disliked to strengthen the monopoly without some redeeming features, M. Cochery inserted in his decree of June 29 a provision establishing the joint liability of stockbrokers, in a way not incontestably legal, for again it may seem strange that a decree is made to do the service of a law.

M. Cochery was apparently correct as far as the stockbroker in normal times is concerned; but events have demonstrated the defects of joint liability in times of financial panics; in such times it causes a real suspension of the market. (February, 1904.)

We find, then, two defects of the joint liability when we examine its effects upon the stockbroker.

But is the joint liability useful so far as the public is concerned? This is another side of the question of joint liability.

The customers of stockbrokers are divided into three categories: Givers of cash orders, speculators, and investors in continuations (*reporteurs*).

Those giving orders for cash have no use for the stockbrokers' joint liability. The transaction for cash includes, so to speak, no serious risk for the customer. Indeed, in giving an order, he deposits a small cover. A few days later he is informed that the securities are at his disposal, or that he may bring the securities sold. He calls, settles, and leaves either with the cash or with the securities. However, not all operations have that immediately interchangeable character. But, as a matter of fact, the risk, independently of the joint liability, is reduced to a minimum. Should that minimum be yet too high, it would not be difficult in a proper system of bourse organization to endeavor to prefer certain creditors, without having to resort to such an empirical means as brokers' joint liability.

Let us pass to the speculators. The most interesting are those who purchase for future delivery to take up securities, or who sell for future delivery to deliver. But the settlement of these transactions is made at liquidation; that is, the moment when the settlement for cash is effected, money against securities, securities against cash, within a very short time.

We can refer these operations to transactions for cash.

Now, all these transactions for cash or for future delivery which we have considered thus far are ordinary commercial transactions, such as are customary for wheat, oil, iron, wool, and other merchandise. These, consequently, the lawmaker protects neither through monopoly nor through joint liability. We are thus able to say that it is not in pursuance of reasons applying to commerce in general that the stockbrokers' joint liability was established. It is in view of conditions peculiar to the profession. Each stockbroker has a considerable following of customers trading for future delivery, who settle their transactions by paying the differences. It is even that class of customers which is most prized; it is the most profitable class. It is for their benefit and for the benefit of "contangoers" (*reporteurs*) that the joint liability was established.

Speculators speculate either for a rise (*sont placés á la hausse*), in which case they are buyers, or for a fall (*sont á la baisse*), in which case they sell short (*sont vendeurs á découvert*).

The joint liability is therefore a measure which aims to make the stockbrokers liable for the defaults of one or more of them in times of panics; that is to say, when there is a general decline in the value of securities.

Who are the creditors of the stockbrokers at such times? Not the bulls (*spéculateurs á la hausse;* they are the debtors of the stockbrokers. It is the bears (*spéculateurs á la baisse*) who are the creditors. They are the ones who have the benefit of the joint liability. Can anything more illogical be imagined? The main effect of the joint liability is to protect the speculator for a fall,

whom the lawmaker of the year III punished with imprisonment, forfeiture of property, and exposure to public view with a sign on his breast bearing the inscription "*agioteur*" (stockjobber); against whom, until recently, article 422 of the *Code pénal* was directed, and against whom there still exists to-day the "*faculté d'escompte*" (right of purchaser to demand his stock at any time by tendering the money). This is a striking instance of aberration in the authors of the law of 1898, which again demonstrates that when the lawmaker starts from false premises, he is bound to be unceasingly tossed about and to fall into all sorts of follies, intended in his mind to justify him, but which succeed only in causing his errors and nonsense to blaze out with greater force.

If we examine the usefulness of the joint liability for continuations (*reports*), we reach conclusions just as much disappointing from an economic standpoint.

Peter is buyer for the 15th instant of securities worth 100,000 francs. Paul is seller of these same securities. Then comes the fifteenth. Paul brings his securities, but Peter has not the funds; this does not concern Paul; he has sold; he delivers. At that moment enters the "contangoer" (*reporteur*)—Jack, we will say—with 100,000 francs. He takes up the securities and resells them to Peter for the next settlement. All this takes place at the stockbrokers', and Peter, Paul, and Jack do not meet. Now, Jack's transaction is very simple. He takes up securities which he resells at once at a slight profit. He makes a temporary investment and, as a result, keeps the securities as long as he is not repaid. He is well insured against risk.

Capitalists, "contangoers," "takers-in," are, therefore, useful, but—may we be pardoned for our license of speech—they are, of all workers, the workers that work the least. They make temporary investments and remain "covered". Well, when we see common commercial contracts resting on trust; when we see thousands upon thousands of tons of merchandise delivered, and the seller merely holding three months' acceptances; when every kind of labor means risks; when every bold capitalist runs all sorts of dangers, the law favors the most timid and the best secured of capitalists. This is not only a violation of justice, it is also a bad economic measure.

Therefore, from an economic standpoint, the stockbrokers' joint liability is not in itself a beneficial measure. It is useful only to the stockbrokers intrenched behind this apparent advantage. It intends to fortify a monopoly in public opinion, but, in so doing, it helps to preserve an institution resting on an obvious error of the lawmaker, by a process which is unnatural, useless—nay, even dangerous.

Moreover, if it is necessary that the stockbrokers be jointly liable, is the joint liability conditioned on monopoly? Is it not possible to conceive of a system of broader association, regulated, as said before, in a proper measure, and propped by the establishing of special guaranty funds through obligatory contributions from those exercising the profession?

Public safety, then, does not make the monopoly an absolute requirement.

(113) Is the monopoly of the stockbrokers an advantage for the State? The State faces a financial cor-

poration, whose power it has itself created, and of which it can rid itself only by indemnifying it.

But the longer we wait, the more will increase the value of negotiable securities, and the more must the seats of the *agents de change* rise in value.

In 1800 there were only six kinds of securities mentioned on the official quotation list. There were eight in 1807.

In 1823 a royal ordinance (of November 21) authorized the quoting of foreign securities. The monopoly was by that much increased in value. The great industrial movement resulting from railroad building found its financial expression in the creation of numerous certificates "to bearer." The value of the monopoly was by that much increased again. In 1867, on July 24, the French law proclaimed the freedom of the limited-liability company in shares. Shares, bonds, and parts start at once multiplying *ad infinitum*. The monopoly is thereby once more increased by that much. In 1885 a law on transactions for future delivery is promulgated, which recognizes as legal the very transactions the interdiction of which seems to have necessitated the institution of the *agents de change*. In 1893 the corporation law becomes still more liberal. Thus, gradually, as the economic movement manifests itself, and the lawmaker enacts measures of more liberal scope, the monopoly —*ipso facto*—is found to expand the field of its privilege, taking advantage of the economic movement of an entire country and of the lawmakers' liberalism—standing by, a passive onlooker of that movement, and watching the value of its offices climbing up, as a result of a progress in which it takes no part.

And it was under these conditions that, in 1898, they proceeded to a reorganization which strengthened the stockbrokers' monopoly. No doubt, in 1898, ten new offices were created. But the ten titularies had to indemnify their new colleagues, and the total market value of all the offices remained the same, keeping its tendency to rise,[a] as much from the fact of the expansion of the securities, as from the weakening of the Coulisse.

No doubt, in 1898, brokerage rates were lowered, but they were slightly raised again in 1901, and a lively press campaign was started in latter times to demand their restoration.[b]

Let us proceed to the last events.

(114) On July 22, 1901, the *Compagnie des agents de change* of Paris entered into a treaty with the curb brokers, according to the terms of which the latter may obtain the stockbrokers' statements of their own transactions (*bordereaux d'agents de change*) in consideration of 20 per cent of the brokerage, when these transactions bear on Turkish or Servian securities and relate to operations balancing each other.

[a] The first office sold was valued at 30,000 francs; about 1830 they rose to 850,000 francs. After the July revolution they fell to 250,000 francs and rose again to 950,000 francs before 1848. They declined at that time to 400,000 francs and reached again in 1857 2,400,000 francs. They declined to 1,400,000 francs after the war, and were unable to rise for some time after the failure of the *Union Générale*. (V. Courtois, *Opérations de Bourse*, 13 éd., p. 239.)

The value of each of the offices on the day following the Reorganization of the financial market was placed at 1,600,000 francs, representing for the 60 offices 96,000,000 francs. The ten new titularies each paid 1,372,000 francs to their combined colleagues; that is to say, 13,720,000 francs, so that the 70 offices were worth 96,000,000 francs as a grand total.

[b] Semaine financière du "*Temps*," September and October, 1908.

In order to fully understand that clause, let us imagine a banker, Peter, receiving the order from a client, Jack, to buy Turkish rente, and another banker, Paul, receiving an order from another client, Louis, to sell.

Peter and Paul, bankers, meet on the Bourse and deal together. They visit together a stockbroker, and ask him for a sale and purchase statement in the name of one of the two. Together they will take all the necessary measures, in order that each may show his client by means of the said statement that the operation was legally carried out.

In that respect it will be rather interesting to cite an important notice published on the subject by the "*Annales de Droit Commercial*," managed by M. Thaller, professor at the law school of the Paris University:[a]

"People living at a somewhat remote distance from the Bourse have still in mind the conditions under which the Paris market was reorganized in 1898. They fancy that now the *parquet des agents de change* (the stockbrokers' parquet) strictly enforces the privilege established for listed securities by article 76 of the *Code de commerce;* it has even been said that the *coulisse de la rente* (the rente coulisse) has been spared. But it now happens that a compromise of wider scope, entered into with the syndicate of bankers dealing in securities for future delivery, causes the public no longer to understand anything of the system of transactions and of the tutelage the law exercises over it.

"The safeguard which the personal mediation of the stockbroker was to give to the execution of bourse orders,

[a] August, 1901, p. 225.

is transformed into some kind of tithe, which he collects on transactions concluded without him. The name '*remisiers*' is given to those who make contracts by themselves, with the only proviso that they shall daily have their trades recorded on the pad of an '*agent*,' who, in return for a percentage of the brokerage, will hand them an official contract. And the members of the Parquet have lent themselves to this playing of the part of a machine. In order that the stockbroker shall run no risk, it was stipulated that the transactions countersigned by him should be booked at once to balance one another—that is to say, the transactions reported on the pad as purchases should immediately be counterbalanced by recording a sale to the same customer, the same curb broker, at the same price.[b]

"So far it has been naïvely believed: (1) That the transactions by application were subjected to regulation limits, such as the verification of whether there had been more advantageous bids or offers (decree, October 7, 1890, art. 43); (2) that a transaction by application that had been immediately carried out had no validity; (3) that the stockbroker held an indirect means of restricting prices, because it was in his power to determine the amount of cover to be exacted, and that wherever his agency does not require him to exact cover, he ceases to be in a position to repress the market's outbursts. It was taken for granted that all the bourse regulations were dependent upon public order. But it rather seems that they were at the mercy of a contract entered into by two corporations anxious to treat each other gently."

[b] See Le Marché Financier du "*Journal des Débats*," February 17.

However, it is necessary to remark that this agreement was forced upon the stockbrokers. The Waldeck-Rousseau Ministry was then in power and was deeply shocked at the way the financial market had been reorganized. The economic principles of M. Caillaux, the Minister of Finance, did not seem to him of a nature to admit that a broad market should be based on a monopolized organization, which is necessarily narrow. In 1898 M. Waldeck-Rousseau had become counsel for the Coulisse after the death of M. Clauzel de Coussergues; but the eminent statesman, the Advocate-Prime Minister, was too high-minded and conscientious to let his client's affairs interfere with his government position. Moreover, any legislative modification with a view to reorganize the financial market, in the manner of the reorganization of 1893, would have been a very serious proceeding, a meaningless formula characteristic of his predecessor, who had been his friend * * * before the "Dreyfus Affair," and in opposition to whose policy the new ministry was called "the Ministry of Republican Defense." The members of the Coulisse were aware of their lawyer's high-mindedness; they had the good sense to understand it, and they abstained from asking the least favor of him; but Waldeck-Rousseau, better than anyone else, knew the extent of the injustice done in 1898. The stockbrokers knew it also, and when M. Caillaux, Minister of Finance, exacted that they enter into an arrangement with the curb brokers, they obeyed, being thoroughly convinced that to resist would be of serious consequence, and that the monopoly would not be worth a rap the day a Minister made up his mind to make an end of it.

Moreover, the stockbrokers are no theorists; not to any greater extent than the curb brokers are. One does not feel embarrassed by considerations of public justice when one is benefited by a privilege in becoming party to a business. On the other hand, if one enjoys a monopoly, he defends it to the best of his ability. If the Government requires that the monopolist give in, he must give in in order to hold on to whatever he can save. And this is why the stockbrokers, when urged to enter into an arrangement with the curb brokers, came to terms, yielding, however, as little as possible.

(115) In short, the French financial market was able to fulfill its mission only by taking the liberties which the law refused to grant to it.

The official market of the stockbrokers, spurred on by the competition of the curb brokers since the beginning of the nineteenth century, has been transacting dealings for future delivery. The laws gave in. They allowed the stockbrokers to do that which was forbidden to them.

They allowed them to have sleeping partners (*bailleurs de fonds*).

They allowed them to deal in foreign securities. At the present time the stockbrokers are legally unable to close a deal with their clients, to have representatives in a market other than the one with which they are connected. These interdictions are the very corollary of their condition. They are ministerial officers, appointed to transact business in one market. To expand their means of action can not be thought of.

But are the curb brokers permitted to undertake what is forbidden to the stockbrokers?

On securities not listed by the stockbrokers—yes.

On securities listed by the stockbrokers—no.

If the curb brokers were to operate in officially listed securities, they would encroach on the stockbrokers' monopoly, and would be liable to administrative fines for want of being able to enter the name of a stockbroker on the register prescribed for the payment of taxes on bourse transactions; also to prosecutions in police courts, and to see, besides, their clients plead the transactions null and void.

The coulisse for rentes (*coulisse de la rente*) is tolerated. The Registry Department enters no complaint against its members, because the stockbrokers provide the curb brokers in rentes (*coulissiers à la rente*) with special documents, valid only as regards the internal revenue—not valid so far as the clients are concerned. And the clients may plead against the curb brokers nullity of the transactions made for their account.

Credit companies and bankers may purchase or sell listed securities over the counter. But they can not apply purchases to sales. In such a case this would be acting as intermediaries, and would fall under the ban of the law of 28 Ventose, year IX, which punishes unwarrantable interference with the functions of the stockbrokers (*immixtion dans les fonctions des agents de change*).

Besides, there exists a judicial tendency, whereby a sale over the counter, even if carried out as a commercial transaction free from any act of mediation, might be considered as a case of unwarrantable interference with the functions of the stockbrokers.

In this way dealings in securities are subject to grotesque and incongruous legal regulations.

A reorganization of the financial market appears necessary. That of 1898 was not a reorganization. Its principal aim was to prevent the passage of the measure which was then paramount in everybody's mind, and which was to be founded on freedom, without excluding regulation.

The freedom of the market—that is to say, free access for everyone to the exercise of the profession of broker in securities, freedom modified by a system of regulation in the exercise of the profession—certainly would offer a desirable compromise between the system of monopoly and the system of absolute freedom.

But the French Government does not seem inclined to study the question seriously: first, because the stockbrokers would have to be indemnified; and secondly, because the stockbrokers themselves are desirous of holding on to their present monopoly. As time passes, the securities, continually on the increase, tend to increase their profits. A financial power has been created whose existence, whose ever spreading influence, form the subject of a serious economic problem, which some day may turn out to be an even more serious *political* problem.



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